

***United States Court of Appeals
for the Second Circuit***



APPENDIX

Docket No. 76-1373

1B
76-1373

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

BENJAMIN GENTILE, *Frank Sacco*

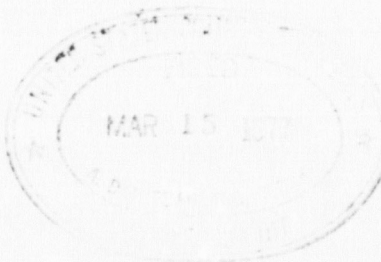
Appellants

Joint APPENDIX TO BRIEF
FOR APPELLANT BENJAMIN GENTILE

Appeal From A Judgment Of
Conviction In The United
States District Court For
The Southern District Of
New York

HOWARD L. JACOBS, P.C.
401 Broadway
New York, New York 10013
Attorney for Appellant
Benjamin Gentile

HOWARD L. JACOBS
DONALD E. NAWI
Of Counsel



PAGINATION AS IN ORIGINAL COPY

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* Several opinions of the district court relevant to the Sacco appeal are in the separate appendix of Sacco.

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

JUDGE GAGLIARDI
JUDGE ~~WINTER~~

72 CRIM 332

(3)

A 1

D. C. Form No. 100 Rev.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	
FRANK SACCO-all cts.	Joel M. Friedman, Strike Force ext. 264-1123
BENJAMIN GENTILE-cts. 2-8	
JOHN RHINES-cts. 3, 5-8	
	For Defendant:

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed ✓	Clerk				
J.S. 3 mailed 1,3,2	Marshal				
XXXXXX Comp. #	Docket fee				
Title 18					
Sec. 891, 892, 2, 894					
Extortionate extension of credit(cts. 1&2) conspiracy so to do(ct. 3) using extortionate means to collect extentions of credit(cts. 4-8) eight counts					

DATE	PROCEEDINGS
3-23-72	Filed Indictment. Indictment ordered sealed. BRIEANT, J.
3-23-72	Warrants of arrest ordered and issued. BRIEANT, J.
3-28-82	Indictment ordered unsealed.
	JOHN RHINES-Brought to court on warrant. Pleading adj'd to 4-10-72/ Ordered fingerprinted and photographed. Bail fixed at \$15,000 PRB secured by depositing \$500 cash with the Clerk of the Court. Paroled until 4PM 3-29-72 to post bond. BRIEANT, J.
3-30-72	Benjamin Gentile-Bt. to court on warrant. Howard Jacobs, requested to confer with defendant for possible assignment pursuant to CJA- Pleading adjourned to 4/10/72. Orderer photographed and fingerprinted. Bail fixed provisionally at \$15,000. unsecured PRB without prejudice to review on 4/10/72. Paroled until 4 P.M. today to post bond. Pollack, J.
3-29-72	JOHN RHINES-Filed appearance bond in the amt. of \$15,000 secured by \$500 cash. Approved: Clerk.

72 CRIM. 332

DATE	PROCEEDINGS
4-10-72	FRANK SACCO-No appearance by deft or counsel. Court directs entry of not guilty plea. Motions ret in 10 days. BENJAMIN GENTILE-No appearance by counsel. Court directs entry of not guilty plea. Bail cont'd (\$15,000 PRB) Motions ret in 10 days. JOHN RHINES-Pleads not guilty. Bail cont'd (\$15,000 PRB sec by \$500) Bail limits to include Northern & Western Districts of N.Y., District of New Jersey and Massachusetts. Motions ret in 10 days. BRIEANT, J
4-10-72	JOHN RHINES-Filed notice of appearance by Vincent W. Lanna, 50 Riverdale Ave., Yonkers, NY 10701 914-968-2020.
3-6-72	<i>Stenille</i> - Filed bench warrant with marshal's return 3-30-72 Executed
3-6-72	<i>Rhines</i> - Filed bench warrant with marshal's return Executed 3-28-72
4-10-72	Rhines- Filed notice of appearance by Vincent W. Lanna, Esq., 50 Riverdale Ave. Yonkers, N.Y (914) 968-2020.
4-5-72	Filed- Gentile copy 5 of C.J.A. form 20. Appointing counsel Howard L. Jac 401 B'way. Rm. 1402 N.Y. N.Y. Phone 431-3710 (Mailed copy to Adm. off. wash. D. C. Pollack, J.
5-1-72	FILED affidavit by Joel M. Friedman Special U.S. Atty. for a writ of habeas corpus ad prosequendum issue. May 5, 1972
5-2-72	Benjamin Gentile Filed- Motion to extend bail limits to include the Eastern District of New York. So ordered Gagliardi, J
5-14-72	Filed- Affvt. of Joel M. Friedman, affvt. in response to thw motions for a bill of particulars and discovery of deft. Rhines
5-18-72	FRANK SACCO - Filed CJA appointing Abraham Solomon as Assigned atty writ adj'd to 5-22-72 Croake, J.
5-22-72	Frank Sacco Filed- Motion for discovery and inspection, for disclosure of witnesses, and disclosure of all exculpatory material and information
	Frank Sacco Filed Motion for reduction of bail
	Frank Sacco Filed Motion for reduction of bail
5-22-72	Frank Sacco Filed-Memo. in support of motion and motion to dismiss indictment
	Frank Sacco Filed-Memo. in support and instanter motion for an order to to consult with witnesses.
	Frank Sacco Filed- Memo in support of motion for severance of defendants
5-22-72	Frank Sacco- Placed on \$15,00 surety bond. Gagliardi, J.
4-21-72	Frank Sacco - Filed Bench Warrant with Marshals return - executed 3-28-72

DATE	PROCEEDINGS
6-14-72	Frank Sacco-filed motion ordering the Affidavit of service Notice of motion A petition for writ of habeas corpus Affidavit of indigency; forma pauperis
6-13-72	Frank Sacco filed <i>Delivered to the</i> <i>filed Petition for Writ of Habeas Corpus - satisfied 5-30-72</i>
9-5-72	Frank Sacco-filed affvt. of Partrick F. Broderick, for writ of habeas corpus. Issued writ ret. 9-11-72
9-12-72	FRANK SACCO-Filed C.J.A. voucher for expert services. GAGLIARDI, J.
9-19-72	E. Gentile - Filed defts. financial affidavit.
9-13-72	Jury Trial -before Gagliardi, J. asx to all defts begun deft Sacco produced on a writ.
9-14-72	Trial cont'd
9-15-72	Trial cont'd
9-19-72	Trial cont'd
9-20-72	Trial cont'd
9-21-72	Trial cont'd count 1 of Indictment dismissed
9-22-72	Trial cont'd
9-25-72	Trial cont'd
9-26-72	Trial cont'd and concluded. Jury finds defts FRANK SACCO GUILTY on cts. 2,3,4,5,6,7&8 BENJAMIN GENTILE GUILTY on cts. 2,3,4,5,6,7 & 8 JOHN RHINES GUILTY on cts. 3,5,6,7&8
	Sacco-Bail revoked
	Gentile- cont'd on 15,000 PRB secured
	Rhines-cont'd on \$15,000 PRB secured \$500 cash PSI ordered Nov. 9 at 9:30 am for sentence Gagliardi, J.
10-11-72	Frank Sacco - Filed defts. notice of motion for a stay of sentence, etc. and letter dated Oct. 2, 1972 to Judge Gagliardi in re sentencing.
10-13-72	Frank Sacco - Filed WHC to have Frank Squires testify as a witness. -- Writ satisfied on 9-21-72
10-20-72	Frank Sacco - Filed defendants letter dated October 11, 1972 to Judge Gagliardi requesting adjournment of sentence and to direct that an evidentiary hearing be held. (letter returned to Judge Gagliardi)
10-26-72	Frank Sacco - Filed defendants notice of motion to set aside verdict.
12-15-72	Frank Sacco - <i>Filed Petition for Writ of Habeas Corpus WITH Marshall's RETURN</i> <i>DATED 9-6-72 WRIT AUTO TO 9-30-72 Gagliardi, J.</i>
12-18-72	<i>Filed Transcript of record of proceedings, dated 9-11-72</i>

- Over -

DATE	PROCEEDINGS
12-18-72	Filed Transcript of record of proceedings, dated 9-14, 15, 19, 20, 21 - 1972
1-18-73	Filed Transcript of report of proceedings, dated 1-22, 25, 26 - 1973
2-8-73	Sacco- Filed motion for reinstatement of bail.
2-14-73	Sacco-Filed affidavit for writ, writ issued ret 2-28-73.
2-15-73	Sacco, Gentile & Rhines-Mailed voucher I of the assigned Court reporters for pre-trial minutes approved. Gagliardi, J.
2-1-73	Gentile-Mailed voucher I to the A.O. for the assigned Court Reporters for transcript of the appeal, approved. Gagliardi, J.
3-13-73	Sacco-Filed deft's pro se motion for a new trial.
3-13-73	Sacco-Filed deft's pro se motion to dismiss the indictment.
3-20-73	FRANK SACCO-Filed writ of habeas corpus with Marshal's return--This Writ returned unexecuted as Frank Sacco is not in the U.S. Penitentiary, Atlanta Georgia at this time he is out on a Writ. (This writ was ret. 2-28-73)
3-22-73	FRANK SACCO-Filed deft's motion for appointment of Special Counsel.
4-6-73	FRANK SACCO - Filed deft's motion for full evidentiary hearing on constitutionality of the N.Y. wiretaps...Memorandum of law attached.
4-4-73	Frank Sacco- Hearing held on wire tap. Deft. produced on writ. Hearing adjourned to 4-5-73. Writ adjourned to 4-5-73. Gagliardi, J.
4-5-73	Frank Sacco-This matter is adjourned until the matter is settled before Judge Kaufman in Baltimore. Writ adjourned sine die. Gagliardi, J.



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DATE	PROCEEDINGS
4-23-73	FRANK SACCO-Filed deft's (pro-se) motion for appointment of an expert in electronic sound detention. and motion for an order prohibiting N.Y.State authorities from editing wiretaps of deft. without Federal supervision.
5-3-73	Frank Sacco- Filed defendants pro-se motion for an order appointing an Conservator in re electronic tape recordings.
4/17/74	Filed deft Frank Sacco's notice of motions for order directing Westchester authorities to particularize the coversations of the illegal wiretaps, etc.
9/9/74	Filed deft. Sacco's notice of motions and motions re: new trial, new judge, new atty., bail, writ of habeas corpus ad pros. ret: no date.
9/23/74	Deft. Frank Sacco- hearing held. Deft. produced on a writ. Hearing concluded. Writ. adjourned to 9/30/74. Gagliardi, J.
12/11/74	Filed deft. Sacco's motion re: order directing the Dist. Atty. of Westchester County N.Y. to turn over to deft. transcribed transcripts of all intercepted conversations obtained pursuant to wiretap orders issued against him.
12/11/74	Filed List of witnesses that deft. would require of the Govt. to subpoena in order to sustain their burden that no leads or evidence came from the illegally intercepted N.Y. State wiretaps which deft. alleged caused his arrest, indictment and conviction in this action.
12/11/74	Filed deft. Sacco's motion for transcript of post-trial proceedings.
12/11/74	Filed letter from Vincent W. Lanna to Judge Gagliardi dated 6/18/74.
12/11/74	Filed letter from Vincent W. Lanna to Judge Gagliardi dated 10/1/74.
12/11/74	Filed letter from Vincent W. Lanna to Judge Gagliardi dated 10/1/74. copy.
12/11/74	Filed Western Union telegram from Bennie Gentle to Judge Gagliardi dated 10/16/74 re: wiretap.
12/11/74	Filed letter from Howard Jacobs to Judge Gagliardi dated 10/30/74.
12/11/74	Filed letter from Howard L. Jacobs to Judge Gagliardi dated 7/10/74.
12/11/74	Filed letter of Howard Jacobs to Judge Gagliardi dated 2/24/74.
12/11/74	Filed letter (copy) from Louis E. Cherico to Mr. Sacco dated 9/22/74.

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DATE	PROCEEDINGS
2/11/74	Filed letter of William H. McInna to Judge Gagliardi dated 9/30/74.
2/11/74	Filed affdvt of Edward M. Shaw re: response to several motions made by the deft.
2/11/74	Filed letter of Frank A. Kaufman, D.J. to Judge Gagliardi re: transcript.
2/11/74	Filed letter of Howard L. Jacobs to Judge Gagliardi re: postpone hearings
2/11/74	Filed deft. Sacco's motion for an order to listen to the illegally obtained tapes and any order allowing deft. to have in his possession his or typewriter.
2/11/74	Filed letter of Frank Kaufman to Judge Gagliardi dated 7/2/74.
2/11/74	Filed letter of Frank Sacco to Judge Fox, Western Dist. of Michigan dated 6/17/74.
2/11/74	Filed letter of Frank Sacco to Judge Gagliardi dated 6/30/74.
2/11/74	Filed deft. Sacco's memo. of law pertaining to admissibility of allegedly tainted evidence.
2/11/74	Filed letter of Frank Sacco to Judge Gagliardi dated 9/23/74.
2/11/74	Filed letter of Frank Sacco to Mr. L. Cherico dated 9/23/74.
2/11/74	Filed letter of Frank Sacco to Judge Gagliardi dated 9/26/74.
2/11/74	Filed letter of Leon Greenspan to Judge Gagliardi dated 7/16/74.
2/11/74	Filed deft. Frank Sacco's affdvt. in reply to Shaw affdvt. of 10/5/74.
2/11/74	Filed deft. Sacco's petition for writ of habeas corpus ad testificandum for John Tortora and Perry Maurino.
2/11/74	Filed deft. Sacco's motion for discovery and inspection re: disclosure of wiretaps and search and seizure.
2/11/74	Filed letter of Frank Sacco to Judge Gagliardi dated 10/18/74.
2/11/74	Filed deft. Sacco's petition requesting the court for a determination of the law with respect to the burden of proof that the Govt. will be bound by to prove that the trial was not tainted.
2/11/74	Filed deft. F. Sacco's motion to conclude evidentiary hearing motion for issuance of subpoena.
2/11/74	Filed letter from F. Sacco to Judge Gagliardi dated 10/15/74.
2/11/74	Filed letter of F. Sacco to Judge Gagliardi dated 10/10/74.
2/11/74	Filed deft. F. Sacco's motion for an instanta order substituting present counsel with new counsel or in the alternative allowing deft. the right to have another inmate assist him thru out the remainder of the hearing.
2/11/74	Filed deft. Sacco's motion for an order directing the U.S. Atty. to turn over to deft. all of the names and addresses of the Govt. Witnesses.

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TE	PROCEEDINGS	Date Order or Judgment Noted
1/74	Filed deft. Sacco's motion for an order directing the U.S. Govt. to turn over to deft. all of the F.B.I. reports and summaries, etc.	
1/74	Filed letter of F. Sacco to Judge Gagliardi, re: Progress Report.	
1/74	F. Sacco- Filed true copy of order of the U.S.C.A. that motion of the appellant for leave to proceed in forma pauperis for a writ of mandamus and post-conviction bail it is ordered: (1) leave to proceed in forma pauperis is granted (2) petition for writ of mandamus is denied (3) appeal from denial of bail is dismissed without prejudice to renewal upon furnishing transcript of Dist. Court reasons for denial of bail (4) Clerk is directed to furnish copy of this order to Judge Gagliardi. Clerk mm	
1-75	<u>Filed transcript of record of proceedings, dated 11/27/74</u>	
75	Deft. Frank Sacco- deft. produced on a writ. Hearing on tampering begun and continued.	
75	Deft. Frank Sacco- hearing on tampering continued. Writ adjourned sine die. Gagliardi, J.	
75	<i>Filed transcript of record of proceedings, dated 12/20/74.</i> B. Gentile- filed CJA 20 approval for payment of fees of atty. Howard L. Jacobs. Mailed copies CJA Clerk.	
5	Filed Govt.'s affdvt. re: response to motions for discovery and for dismissal of the indictment.	
5	Filed Govt.'s memo. of law.	
5	Filed Govt's suppl. memo. of law.	
75	<u>Filed transcript of record of proceedings, dated Jan 6, 7, 1975.</u>	
5	Filed true copy of order of the U.S.C.A. that the motion of F. Sacco for leave to proceed in forma pauperis for a writ of mandamus and post-conviction bail, it is ordered that leave to proceed in forma pauperis is granted; petition for writ of mandamus is denied; appeal from denial of bail is dismissed without prejudice to renewal upon furnishing transcript of District Court; reasons for denial of bail; and the Clerk is directed to furnish copy of this order to Judge Gagliardi, J. mm	
-75	Filed Govt. affdvt. re: response to discovery motion.	
75	Filed Govt's affdvt. re: response to claim of tampering.	
75	Filed CJA 20 (deft. Frank Sacco) approval for payment of fees of atty. Abraham Solomon, Esq. Gagliardi, J. issued copies CJACK	
-75	<u>Filed transcript of record of proceedings, dated 3-5-75.</u>	

DATE	PROCEEDINGS	Date of Judgment
7-28-75	Filed OPINION # 42859- deft. F. Sacco moves to set aside verdict on the ground that they were allegedly based upon evidence derived from concededly illegal wiretaps of his phones conducted by the Westchester County Dist. Atty.'s Office...I would conclude that there has been no intentional destruction of or tampering with any of the tapes in question...Gagliardi, J. m/n	
02-09-76	Deft: Sacco-Deft's not appearing--All motions are denied. Gagliardi, J.	
03-17-76	Filed affdvt. of Michael C. Eberhardt re: response to motion of F. Sacco to have his motion for a taint hearing reinstated.	
03-30-76	Benjamin Gentile-hearing held on suppression. hearing adj. to 1 week. Gagliardi, J.	
04-29-76	Filed Govt.'s proposed findings of fact with respect to the taint issue.	
5-6-76	Filed transcript of record of proceedings. Dated Mar 22, 1976	
06-01-76	Filed deft.'s memo. of law in support of motion to dismiss, etc.	
06-03-76	Filed aff. for w/h/c ad pros. for Frank Sacco. ret: 6-9-76.	
06-04-76	Filed Opinion # 44525-...The deft's request to reinstate his motions and to set aside the jury verdict is thus denied. Gagliardi, J. m/n	
06-09-76	Frank Sacco-filed JUDGMENT (atty. Frank Sacco pro-se) cts. 2, 3, 4, 5, 6, 7 & 8- 20 yrs. impr. ea. ct. conc. and to run concs. to all out standing sentences. Pursuant to Section 4208(a)(2) of T. 18, U.S. Code, deft. shall become eligible for parole at such time as the Board of Parole may determine. Gagliardi, J. issued all copies.	
06-09-76	John Rhines-Filed Judgment (atty. Vincent W. Lanna) Cts. 3, 5, 6, 7, & 8- 1 yr. & 1 day impr. ea. ct. conc. Gagliardi, J. issued all copies.	
06-10-76	Frank Sacco-filed notice of appeal from judgment of 6-9-76. Leave to file appeal in forma pauperis without payment of the statutory fee is granted. Gagliardi, J. Mailed copies.	
06-15-76	Filed deft. John Rhines's notice of appeal from judgment of 6-9-76. mailed copies.	

A TRUE

CERTIFICATE

By *P. E. Thompson* ADT, Clerk

Deputy Clerk

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DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
07-29-76	Benjamin Gentile-Filed Judgement.Deft. sentenced to Fifteen (15) Months on each of counts 2, 3, 4, 5, 6 and 7 Conc. Deft. is to be given credit for the time he served on his contempt sentence. On Ct. 8, I.S.S. Deft. is placed on probation for a period of Two(2) Yrs., to follow service of sentence on Cts. 2, 3, 4, 5, 6, and 7, subject to the standing probation order of this Court. When deft. has compleated his state sentence, the deft. is conc. on present bail pending appeal. GAGLIARDI J.	
8-3-76	FRANK SACCO: Filed defendant's motion for discovery & inspection re: wiretaps, post-trial hearing.	
8-3-76	SACCO: Defendant's motion for discovery & inspection re: post-trial hearing.	
8-3-76	SACCO:: Filed deft's. motion to dismiss conviction for lack of fast "taint" hearing.	
8-3-76	SACCO: Filed affdvt. of Sacco in reply to Govt's. response to motion.	
8-3-76	SACCO: Filed deft's. notice of motion for a jury trial. Ret. May 30-75.	
8-3-76	SACCO: Filed defts. memorandum re: tampering hearing.	
8-3-76	SACCO: Filed dft's. rep'y to Govt. response re motion for discovery.	
8-3-76	SACCO: Filed Government's supplemental memo of law.	
8-3-76	SACCO: Filed Govt's. memorandum of law.	
8-3-76	SACCO: Filed deft's. motion for reinstatement of post-trial 'taint' hearing.	
8-3-76	SACCO: Filed Deft's. Memorandum in response to Govt. Affdvt. re 'taint'.	
8-3-76	GENTILE: Filed stipulation that the testimony of 2626 pages from Florida and 1785 pages from Maryland is submitted to the Court in its entirety for consideration in the taint hearing.	

FILINGS—PROCEEDINGS

AMOUNT
REPORTED IN
EMOLUMENT
RETURNS

GENTILE: Filed affdvt. of Louis E. Cherico, asst. DA for Westchester Cty.

GENTILE: Filed affdvt. of William H. McKenna Asst. DA Westchester County.

Filed transcript of record of proceedings dated Mar 30- 1976

5 Filed deft. B. Gentile's notice of appeal from Judgment of
7-29-76- (I.F.P.) mailed copies.

i Filed W/H/C AD PROS. with marshals return.

Writ Satisfied on 07-30-76. B. Gentile

Gagliardi J.

FRANK SACCO & BENJAMIN GENTILE - Filed Notice of Certification
of 1st Supplemental ~~XXXXXX~~ Record to the USCA.

B. Gentile-filed Unsecured P.R.B. \$15,000.

John Rhines, Filed order that deft's motion for reduction
of sentence is granted...So Ordered, GAGLIARDI.J.John Rhines, Filed Amended Judgment the execution of the
sentence of incarceration is stayed. Deft. is placed on
probation for 1 year and 1 day as substituted for the per-
iod of incarceration originally imposed....GAGLIARDI.J.
Issued all copies.

Filed Transcript of record of proceedings dated 9-23-74.

John Rhines, - Filed order that the deft's motion for
reduction of sentence is granted....GAGLIARDI.J.6 Filed transcript of record of proceedings, dated 6-9-76Filed notice that the suppl. record on appeal has been
certified and transmitted to the U.S.C.A.Filed transcript of record of proceedings, dated 6-9-76.

DATE	PROCEEDINGS
11-24-76	Filed Memorandum Decision- deft. Frank Sacco moves for an order remanding this case now pending before the U.S.C.A. 2nd Circuit "for a full and complete 'caint' hearing". Upon the filing of a notice of appeal, the District Court no longer had jurisdiction to pass upon the present application, etc... motion denied. Gagliardi, J. m/n
11-18-76	Filed affdvt. of Michael C. Eberhardt re: reposonse to motion for remand from the 2nd Circuit for a full and complete "taint" hearing.
12-17-76	Filed affdvt. (copy of document filed 11-18-76).
12-17-76	Filed deft. Frank Sacco's motion for remand from the 2nd Circuit for a full and complete "taint" hearing. (see entry of 11-24-76)
12-22-76	John Rhines-filed J&C and marshal's return, deft. delivered to: amended judgment and commitment -sent. E.S.S.
02-02-77	GENTILE: Filed Memorandum Decision-Court feels that in view of the unusual circumstances present in this case, counsel should be allowed the full amount requested. So Ordered. Gagliardi, J. m/n
02-02-77	GENTILE: Filed Memorandum Decision(See Above) with CJA 20 appointment of counsel-Howard L. Jacobs, 401 Bway, NYC10013 431-3710. Gagliardi, J. issued all copies
02-14-77	GENTILE: Filed CJA 20 approval for payment of fees of atty. Howard L. Jacobs. Gagliardi, J. Issued all copies.
02-14-77	GENTILE: Filed CJA 20 appointment of counsel-Howard L. Jacobs. Gagliardi, J. Issued all copies.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

72 CRIM. 332

- v -

INDICTMENT

FRANK SACCO
BENJAMIN GENTILE and
JOHN RHINES,

Defendants

MICROFILM CR.

MAR 23 1972

FILED

MAR 23 1972

S. D. OF N. Y.

COUNT ONE

The Grand Jury charges:

On or about March 16, 1970, in the Southern District of New York, the defendant, FRANK SACCO, as creditor, unlawfully, wilfully and knowingly did make an extortionate extension of credit, that is, said defendant-creditor did make a loan in the amount of \$500.00 to James William Robbins, the debtor, with respect to which loan it was the understanding of the defendant-creditor and the debtor, at the time the loan was made, that delay in making repayment and failure to make repayment could result in the use of violence and other criminal means to cause harm to the person, reputation and property of the debtor and others.

(Title 18, United States Code, Sections 891 and 892)

COUNT TWO

The Grand Jury further charges:

On or about May 5, 1970, in the Southern District of New York, the defendants, FRANK SACCO and BENJAMIN GENTILE, as creditors, unlawfully, wilfully and knowingly did make an extortionate extension of credit, that is, said defendant-creditors did make a loan in the amount of \$1,000.00 to James William Robbins, the debtor, with respect to which loan it was the understanding of said defendant-creditors and the debtor,

at the time the loan was made, that delay in making repayment and failure to make repayment could result in the use of violence and other criminal means to cause harm to the person, reputation and property of the debtor and others.

(Title 18, United States Code, Sections 891, 892 and 2)

COUNT THREE

The Grand Jury further charges:

1. From on or about March 16, 1970, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, FRANK SACCO, BENJAMIN GENTILE and JOHN RHINES, the defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other, and with others to the Grand Jury unknown, to participate in the use of extortionate means to attempt to collect an extension and extensions of credit from James William Robbins, the debtor.

2. It was part of said conspiracy that the defendants would and did agree to use violence and other criminal means, and the express and implicit threat of the use of violence and other criminal means, to cause harm to the person, reputation and property of the debtor and others.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

1. On or about April 24, 1970, BENJAMIN GENTILE did receive a payment from James William Robbins.

2. On or about April 30, 1970, FRANK SACCO and BENJAMIN GENTILE did meet with James William Robbins in Peekskill, New York.

3. On or about June 5, 1970, BENJAMIN GENTILE did meet with James William Robbins in Peekskill, New York.

4. On or about December 6, 1971, FRANK SACCO and JOHN RHINES did meet with James William Robbins in Peekskill, New York.

5. On or about December 10, 1971 JOHN RHINES did meet with James William Robbins in Peekskill, New York.

A 14

6. On or about January 21, 1972 BENJAMIN GENTILE did meet with James William Robbins in Peekskill, New York.

(Title 18, United States Code, Sections 891 and 894)

COUNT FOUR

The Grand Jury further charges:

On or about June 5, 1970, in the Southern District of New York, the defendants, FRANK SACCO and BENJAMIN GENTILE unlawfully, wilfully and knowingly did participate in the use of extortionate means to collect and attempt to collect extensions of credit from James William Robbins, the debtor, in that the defendants did use express and implicit threats of use of violence and other criminal means to cause harm to the person, reputation and property of the debtor and others.

(Title 18, United States Code, Sections 891, 894 and 2)

COUNTS FIVE THROUGH EIGHT

The Grand Jury further charges:

On or about the dates set forth below, in the Southern District of New York, the defendants FRANK SACCO, BENJAMIN GENTILE and JOHN RHINES, unlawfully, wilfully and knowingly did participate in the use of extortionate means, to collect and attempt to collect extensions of credit from James William Robbins, the debtor, in that the defendants did use express and implicit threats of use of violence, and other criminal means to cause harm to the person, reputation and property of the debtor and others.

COUNT

DATE

Five
Six
Seven
Eight

December 6, 1971
December 10, 1971
January 3, 1972
January 21, 1972

(Title 18, United States Code, Sections 891, 894 and 2)

Harold H. Baker
FOREMAN

Whitney North Seymour, Jr.
WHITNEY NORTH SEYMOUR, JR.
United States Attorney for the
Southern District of New York

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2 My charge will be a little bit lengthy this morning,
3 and that is understandable because we have seven counts in the
4 indictment, we have three defendants involved and we have a
5 complicated charge insofar as conspiracy is concerned which
6 is one of the counts in the indictment.

7 When I say I am charging you I simply mean that I
8 am going to explain the law that you must apply in reaching
9 your decision in this case. I ask that you not draw any in-
10 ferences from any ruling or comments I have made in this case
11 thus far.

12 It is my obligation, as I told you at the outset of
13 this case, to make certain rulings when objections are made, to
14 make certain rulings about the admissibility of evidence and
15 that is my function as the judge, to pass upon that impartially.

16 I hope that I have not in any way conveyed to you
17 any impression as to my thoughts about the merits of the case
18 about which you are to decide.

19 If in any way you have gained any impression that I
20 favor one side or the other in this case, please eliminate it
21 completely from your mind. I must be as impartial in my rul-
22 ings here as you must be impartial in your determination of the
23 fact questions in this case.

24 Again, I can't tell you how important it is. Some-
25 times jurors will either take a liking or a disliking to the

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2 judge who sits on a case, and I think we all try in every way,
3 to make any feelings that we have about how your determinations
4 should be, and if I not succeeded in masking from you any
5 thoughts I may have about this case, I have failed in my
6 attempt to be objective and impartial.

7 And if I have failed, please disregard any thoughts
8 you may have about it, because it is most important that the
9 case involved here be decided by you with complete impartiality
10 from outside influences.

11 I asked you not to talk to members of your family or
12 anybody else about this case because I wanted you to decide
13 this case on what you heard here in the courtroom. I hope you
14 heard it and felt that my rulings were done on the basis of the
15 law and not for any feeling that I might have about how this
16 case should be decided.

17 Every case consists of two parts, the evidence or
18 facts, and the law, and each part is equally important. No
19 matter what any counsel may have said or even what you may think
20 from your own experience in your determination of this case,
21 the law is what I tell you it is and you must accept it one
22 hundred per cent.

23 You have been chosen and sworn as jurors in this
24 matter to try the issues presented by the allegations or claims
25 of the indictment, and on your determination of the facts, to

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2 decide whether the defendants have or have not been proven
3 guilty beyond a reasonable doubt of the facts with which each
4 one of them is charged.

5 In performing your function as jurors, you are to
6 act without fear, favor, prejudice or bias one way or the
7 other, either to the Government or to the defendants. The law
8 does not ~~permit~~ jurors or anyone connected with the trial to be
9 governed by sympathy or prejudice or public opinion.

10 In this connection, the Government must be considered
11 in no different light from any other party to a law suit and
12 counsel for the Government must be considered in no different
13 light from counsel for the defendants or any other litigant.
14 The fact that the Government is a party here entitles it to no
15 greater and no lesser consideration than that offered to any
16 other party to a law suit.

17 The defendants and the Government each have a right
18 to expect that you will carefully and impartially consider
19 all the evidence, follow the law as I give it to you, and reach
20 a verdict whether for the Government or for the defendants, and
21 regardless of consequences.

22 Although you, as jurors, are the sole judges of the
23 facts, you are duty bound to follow the law as stated in these
24 instructions, and to apply that law to the facts as you find them
25 to be.

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2 We are partners here, you and I. I tell you what the
3 law is and you are bound by it. You determine what the facts
4 are and then apply the law to those facts and we are all bound
5 by that.

6 I ask that you not single out any single instruction
7 of mine as stating the law alone. Take them all into account
8 after you have heard them all.

9 The law presumes a defendant to be innocent of a
10 crime. A defendant, although accused, begins the trial with a
11 clean slate, with no evidence against him, and the law permits
12 nothing but legal evidence presented before the jury to be
13 considered in support of any charge against the accused, so
14 the presumption of innocence alone is sufficient to acquit a
15 defendant unless you, as jurors, are satisfied beyond a reason-
16 able doubt of the defendant's guilt after careful and im-
17 partial consideration of all the evidence in the case. A
18 defendant is never to be convicted on mere suspicion or con-
19 jecture.

20 The burden is upon the prosecution to prove guilt
21 beyond a reasonable doubt and this burden never shifts to the
22 defendant for the law never imposes upon a defendant in a
23 criminal case the burden or duty of calling any witnesses or
24 producing any evidence.

25 In connection with the presumption of innocence, a

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2 a defendant is presumed to be innocent at all times and through
3 the entire trial, unless and until the Government proves a
4 defendant guilty beyond a reasonable doubt. For these reasons,
5 a defendant need not take the witness stand and testify in his
6 own behalf.

7 The fact that one defendant, Mr. Rhines, did testify
8 at this trial and that the other defendants did not testify,
9 does not create any presumption against the defendants who did
10 not take the stand, and I charge you that this fact must not
11 weigh in the slightest against the defendants who did not take
12 the stand nor shall this fact enter into your discussions or
13 deliberations in any manner.

14 I have mentioned that the Government must prove its
15 case beyond a reasonable doubt, and I will attempt to define
16 that to you.

17 A reasonable doubt is not a vague or speculative or
18 imaginary doubt. It is a doubt based on reason arising from
19 the evidence or lack of evidence. It is a doubt which could
20 cause a reasonable man or woman, like yourselves, to hesitate
21 to act in relation to your own important private affairs. That
22 is a reasonable doubt. The burden, as I have said, is always
23 upon the prosecution to prove guilt beyond a reasonable doubt
24 and this burden shifts to a defendant.

25 Mere suspicion will not justify conviction. A

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2 suspicion is not a substitute for evidence nor is it sufficient
3 to convict if you find that the circumstances merely render an
4 accused probably guilty. On the other hand, it is not required
5 that the Government must prove guilt beyond a reasonable doubt
6 all possible doubt, but the proof must be of such a convincing
7 character that you would be willing to rely and act on it in
8 the importance of affairs of your own life.

9 Thus, a reasonable doubt exists whenever, after care-
10 ful and impartial consideration of all the evidence in the case,
11 you as jurors, do not feel convinced to a moral certainty that a
12 defendant is guilty of the charge.

13 So if you view the evidence as reasonably permitting
14 either of two conclusions, one of innocence, the other of guilt,
15 then, of course, the jury should adopt the conclusion of inno-
16 cense.

17 On the other hand, if the Government, as I have said,
18 has said you in accordance with my instruction-, as to reasonable
19 doubt and if you find that the defendant or defendants beyond
20 a reasonable doubt are guilty, then your verdict should be
21 guilty.

22 I did inform you when we started this case, that I
23 would have to pass on objections and that you were not to keep
24 any score card as to the number that I ruled one way or the
25 other and that is the obligation of the attorneys, to make those

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2 objections, and for me to pass upon them and nothing is to be
3 gained by either my sustaining or overruling of objections.

4 The manner in which you judge the evidence is not
5 any different from the way in which all reasonable persons treat
6 any question depending upon evidence presented to them.

7 You are expected to use your good common sense. Con-
8 sider the evidence in the case for only those purposes for which
9 it has been admitted and give it a reasonable and fair construct:
10 in the light of your common knowledge of the natural tendencies
11 and inclinations of human beings.

12 If the accused be proved guilty beyond a reasonable
13 doubt, say so. If not so proved guilty, say so.

14 Keep constantly in mind that it would be a violation
15 of your sworn duty to base a verdict of guilty upon anything
16 other than the evidence in this case. And remember as well
17 that the law never imposes upon a defendant in a criminal case
18 the burden or duty of calling any witnesses or producing any
19 evidence.

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Now, there are generally speaking two types of evidence from which a jury may properly find the truth as to the facts of a case. One is direct evidence, such as testimony of a witness. I saw somebody do something, and I report to you what he did. That is direct evidence. The other is indirect, or circumstantial evidence.

The proof of a chain of circumstances pointing to the existence or non-existence of certain facts. That is, from the facts that are testified you may reasonably draw inferences that certain other conditions exist. That is called circumstantial evidence. And there is no distinction in the law between direct and circumstantial evidence, but simply a jury is required to find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

You are, as I have said, to consider only the evidence in this case which consists of the sworn testimony of the witnesses, the exhibits which have been received in evidence, the facts which have been stipulated and the presumptions which I have told you about in these instructions, such as the presumption of innocence. But while you are to consider only the evidence in this case, you are not limited to the bald statements of the witnesses. On the contrary, you are permitted to draw from

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2 the facts which you find have been proved such reasonable
3 inferences as seem justified to you in the light of your
4 own experience.

5 An inference is a fancy word for a conclusion
6 which reason, or common sense, leads you to draw from the
7 facts that have been proved here.

8 I again repeat, which I said before, that the
9 indictment is only a formal method of accusing a defendant
10 of the crime charged, and in and of itself is not evidence
11 against the defendant. I know I have told you several
12 times, but I will tell you again, it is convenient at
13 this point, that if any reference by the Court or by
14 counsel to matters of evidence does not coincide with your
15 own recollection, it is your recollection which controls
16 during your deliberations. You as jurors are the sole
17 judges of the credibility of the witnesses and the weight
18 their testimony deserves. You should carefully
19 scrutinize the testimony given, the circumstances under
20 which each witness has testified and every matter in
21 evidence which tends to indicate whether the witness is
22 worthy of belief.

23 Consider each witness's intelligence, motive
24 and state of mind, demeanor and manner while on the stand.

25 Consider also any relation each witness may

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2 bear to either side of the case. The manner in which each
3 witness might be affected by the verdict, and the extent
4 to which, if at all, each witness is either supported or
5 contradicted by other evidence.

6 Inconsistencies, or discrepancies in the
7 testimony of a witness, or between the testimony of
8 different witnesses, may or may not cause a jury to
9 discredit such testimony.

10 Two or more persons witnessing an incident or
11 a transaction may see or hear it differently. Innocent
12 misrecollection, like failure of recollection, is not an
13 uncommon experience. In weighing the effect of a dis-
14 crepancy consider whether it pertains to a matter of
15 importance or an unimportant detail, and whether the dis-
16 crepancy results from innocent error, or wilful falsehood.

17 If you find a presumption of truthfulness to be
18 outweighed as to any witness, you can do one of two things:
19 you can either reject all of that witness's testimony on
20 the ground that it is all tainted by falsehood and that
21 none of it is worthy of belief or, you can accept that
22 part, or those parts which you believe to be credible and
23 reject those parts which you believe to be tainted by
24 falsehood.

25 This is what the law says you can do with the

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testimony of a witness whom you believe testified falsely while on the witness stand. In determining credibility of a particular witness any evidence that a witness has been convicted in the past of certain crimes may be considered by you.

If it is peculiarly within the power of either the prosecution or the defense to produce a witness who could give material testimony on an issue in the case, failure to call that witness may give rise to an inference that his testimony would be unfavorable to that party. However, no such conclusion should be drawn by you with regard to a witness who is equally available to both parties or where the witness's testimony would be merely cumulative. Again, in that respect, I charge you here at this point what I have charged you before, that the law never imposes upon a defendant in a criminal case to produce any witnesses or produce any evidence.

Now, these are general propositions for you to consider in arriving at your verdict. You have heard, and I am not going to review the testimony of the witnesses here in this case, because you have heard the summations of counsel, you have paid attention to the witnesses that have appeared on the stand. It is the government's contention that there was an extortionate extension of

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credit, and I will define these terms for you later on, and that collection of it was to be done if payment were not made by threats of bodily harm or violence. I will be more specific in that.

That is generally the contention of the government on the witnesses whom they have produced here. And I think the names of them all, the witnesses who were produced, were mentioned yesterday in the summation of counsel. And it is the contention of the defendants that there was no such threat of harm, that this was a normal business loan without any threats being made, that if payment were not made that no harm would ensue. Those are merely the contentions of the parties.

Now, I want to specifically charge you, or inform you about the crimes with which each defendant is charged. In brief, the indictment, and, incidentally, I am going to make available to you before you start your deliberations the indictment itself, the remaining counts in the indictment which are counts 2 through 8. You will have that available to you in the juryroom.

I will also make available to you a form of verdict, which is how you will return your verdict when you return to the court.

The indictment charges the defendants, Frank Sacco, Benjamin G. Smith, and John J. White, with violation of the Extortionate Credit Transaction Act.

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2 Now, this act provides in pertinent part as follows:

3 "Whoever makes any extortionate extension of credit
4 shall be guilty of a crime."

5 In addition to making the extortionate extension of
6 credit a crime, the act provides that, in Section 894,:

7 "Whoever knowingly participates in any way in the
8 use of any extortionate means, one, to collect or attempt to
9 collect any extension of credit or, two, to punish any per-
10 son for the repayment thereof, shall commit a crime."

11 In addition to the specific activities prescribed,
12 a conspiracy or agreement to commit these acts constitutes a
13 separate crime.

14 Thus, in a conspiracy charge, there is no need to
15 prove an actual violation of the extortionate credit laws.
16 However, the Government must prove an agreement to violate these
17 laws. A conspiracy to violate the extortionate credit trans-
18 action act is a separate crime entirely distinct from a sub-
19 stantive crime, which may be the goal of the conspiracy.

20 Now, as I have indicated, the indictment contains
21 seven counts that are presently before you. The indictment
22 number 1, count 1, which set forth that on March 16, 1970,
23 Frank Sacco unlawfully made a loan in the amount of \$500 in
24 violation of the statute, has been dismissed. That is no longer
25 before you.

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2 Count 2, the second count, involves making extor-
3 tionate extension of credit and specifically count two charges
4 that on or about May 5, 1970, in the Southern District of
5 New York, the Southern District of New York encompasses for
6 our purposes, Manhattan, The Bronx and Westchester Counties,
7 the defendants Sacco and Benjamin Gentile, as creditors, unlaw-
8 fully, wilfully and knowingly did make an extortionate exten-
9 sion of credit, that is, said defendants did make a loan in
10 the amount of \$1,000 to James William Robbins, the debtor, with
11 respect to which loan it was the understanding of said defend-
12 ant creditors and the debtor at the time the loan was made,
13 that delay in making repayment and failure to make repayment
14 could result in the use of violence and other criminal means
15 to cause harm to the person, reputation and property of the
16 debtor and others.

17 Now, in that count, as I have said, the defendant
18 Frank Sacco and Benjamin Gentile, are named. In order to find
19 the defendants guilty of the crime charged in this count, you
20 must find beyond a reasonable doubt that, one, the particular
21 defendant did in fact unlawfully, wilfully and knowingly make
22 a loan to James William Robbins in the amount and on or about
23 the date charged in the indictment, and an act is done know-
24 ingly if it is done voluntarily and purposefully, and not because
25 of mistake, accident, mere negligence or other innocent means.

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2 An act is done wilfully if it is done knowingly and
3 deliberately. Wilfully does not mean that the defendant in
4 addition to knowing what he is doing must also suppose he is
5 breaking the law.

6 Ignorance of the law is no excuse. Only in those
7 cases where mere failure to act may be involved. And two, that
8 is one point, acting unlawfully to make a loan on the date
9 charged and two, that such loan constituted an extortionate
10 extension of credit.

11 In this connection, you may find that an extension
12 of credit is extortionate if you find beyond a reasonable doubt
13 that the repayment of the extension of credit or the performance
14 of any promise given in consideration thereof would be unenfor-
15 ble through civil, judicial process against the debtor in the
16 jurisdiction within which the debtor resided.

17 And in this connection I charge you that the law in
18 New York State during the period of time referred to in the
19 indictment, was that a person who was not a licensed lender could
20 not enforce through civil judicial process, the collection of
21 either the principal or the interest and a loan such as has been
22 testified to in this case, if the interest was in excess of
23 seven and a half per cent per year. And to rephrase that, if
24 a loan by a non-licensed lender is in excess of seven and a
25 half per cent per year, said loan in New York State is void

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2 void as a matter of law.

3 And two, the extension of credit was made at a rate
4 of interest in excess of an annual rate of 45 per cent cal-
5 culated according to the actuarial method of allocating pay-
6 ments made on a debt between principal and interest pursuant
7 to which a payment is applied first to the accumulated interest
8 and the balance is applied to the unpaid principal.

9 And you have heard testimony here as to the rate of
10 interest on a \$500 loan with \$25 a week interest and on a
11 \$1500 loan with \$75 interest per week.

12 You have heard testimony in this case in that connec-
13 tion. Now there is a third branch to this act that you must
14 find. Thirdly that the extension of credit that at the time the
15 extension of credit was made the debtor reasonably believed
16 either, a, one or more extensions of credit by the creditor had
17 been collected or attempted to be collected by extortionate
18 means, or the non-repayment thereof had been punished by
19 extortionate means or, b, the creditor had a reputation for the
20 use of extortionate means to collect extensions of credit to
21 punish the non-repayment thereof.

22 Now, the term "extortionate means" is defined in
23 title 18, United States Code, section 8917 as, in the statute,
24 any monies which involves the use or an expressed or implicit
25 threat of use of violence or other criminal means to cause harm

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2 to the person, reputation or property of any person. And
3 finally you must find that upon the making of the extension
4 of credit the total of the extensions of credit by the credi-
5 tor to the debtor then outstanding, including any unpaid interest
6 or similar charges, exceeded \$100.

7 Now, in connection with the second count, I charge
8 you that in order to find the defendants guilty you must be
9 satisfied beyond a reasonable doubt that the debtor, James
10 William Robbins, was fearful that violence or criminal means
11 would be used to check the debt at the time the loan was
12 initially made.

13 It is not sufficient to support a verdict of guilty
14 that the debtor later acquired such fears or apprehensions. In
15 addition you must find that the fear of Robbins, if it existed,
16 was a fear that would occur to a reasonable man under the
17 same circumstances.

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2 The 4th, 5th, 6th, 7th and 8th counts involve
3 the use of extortionate means to collect and attempt to
4 collect extensions of credit specifically as follows:

5 I have skipped count 3. That is a conspiracy
6 count, and I will charge you later.

7 Count 4 charges that on or about June 5, 1970,
8 in the Southern District of New York, the defendants
9 Frank Sacco and Benjamin G. Gile unlawfully, wilfully
10 and knowingly did participate in the use of extortionate
11 means to collect and attempt to collect extensions of
12 credit from James William Robbins, the debtor, in that
13 the defendants did use express and implicit threats of
14 use of violence and other criminal means to cause harm
15 to the person, reputation and property of the debtor
16 and others.

17 The same provisions as I have given you with
18 respect to count 2 insofar as what constitutes an extortion-
19 ate extension of credit applies here and I am not going
20 to repeat them because you have already heard those.

21 Counts 5 through 8 charge that on or about
22 the dates set forth below, in the Southern District of
23 New York, the three defendants, Frank Sacco, Benjamin
24 Gentile and John Rhines, unlawfully, wilfully and
25 knowingly did participate in the use of extortionate

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2 means to collect and attempt to collect extensions of
3 credit from James William Robbins, the debtor, in that the
4 defendants did use express and implicit threats of use of
5 violence and other criminal means to cause harm to the person,
6 reputation and property of the debtor and others.

7 On count 5 the date is December 6, 1971.

8 On count 6 the date is December 10, 1971.

9 Count 7, January 3, 1972.

10 Count 8, January 21, 1972.

11 In order to convict the defendants of the crime
12 charged in these counts you must find beyond a reasonable
13 doubt the following elements:

14 That the defendant Frank Sacco had made a loan
15 of money to James Sonny Robbins and as of the date of the
16 loan James Sonny Robbins owed principal or interest on that
17 loan.

18 Two, that on or about the date stated in the parti-
19 cular count you are considering the defendant or defendants
20 made an attempt to collect the principal or interest owed
21 to him by Robbins, that is, that on or about that date
22 the defendant attempted to induce Robbins to repay principal
23 or interest on that date.

24 Three, that in so attempting to collect the
25 loan the defendant or defendants acting unlawfully,

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2 wilfully and knowingly -- and those terms have been defined
3 for you -- in any way participated in the use of extortionate
4 means of collection.

5 The statute defines an extortionate means as
6 "any means which involves an express or implicit threat
7 of use of violence or other criminal means to cause harm
8 to the person, reputation or property of any person."

9 Maybe it seems simple, but violence means simply
10 physical harm of any kind.

11 In deciding whether the defendant or defendants
12 wilfully made implied threats of physical harm or other
13 criminal means to Robbins you must use your good common
14 sense. You should take into consideration all of the
15 evidence in this case bearing on what the defendants
16 intended by their statements and what they actually said
17 to Robbins.

18 Words, harmless in themselves, may take on a
19 sinister and threatening meaning in the context in which
20 they are used. On the other hand, you may decide that
21 the words used by the defendant or defendants in the full
22 context of what was said carried no such threatening
23 significance.

24 The question for you to decide is whether a
25 defendant intended by his words to give the impression

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2 that physical harm or other criminal means would be used
3 against Robbins if he refused to pay, and if so, whether
4 in the full context of the conversation the words actually
5 used by the defendant reasonably appear to you to have
6 stated such threats by implication.

7 I say words there and I also mean acts or any
8 other matter in evidence here which might convey that
9 impression.

10 It should be noted that a defendant need not
11 physically perform the specific acts constituting the crime
12 set forth in these instructions to be found guilty of the
13 substantive crimes charged.

14 I am going to go on for a little bit more,
15 until we come to the question of conspiracy, which is
16 quite a charge, and then we are going to take a short
17 break, we will give you a chance to stretch your feet
18 and rest your minds for a moment because this is a lot of
19 information that is being given to you, but we will go on
20 for a few more minutes and we will take a break and I will
21 continue with the charge.

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2 State of mind. In connection with the substantive
3 crimes charged, you have heard the testimony of James Sonny
4 Robbins, who stated that at the time he made the second loan he
5 understood that physical harm could result to him if he failed
6 to repay any part of the loan and also at the time he made each
7 of the loans he was aware of the defendant Sacco's reputation
8 in the community for being a violent person.

9 The Court instructs you that you may consider such
10 testimony only as evidence of the state of mind of James Sonny
11 Robbins when he borrowed the money and not as proof of the
12 facts asserted.

13 In addition, I charge you that unless you are satis-
14 fied that this testimony related to the defendant Sacco's repu-
15 tation in a community of which Robbins was a member, you may
16 not consider it for any purpose.

17 With regard to counts two, four, five, six, seven and
18 eight of the indictment--those are all the counts except the
19 conspiracy count, but which I will charge you later--the
20 Government relies upon a statute which reads in relevant part
21 as follows:

22 "Whoever commits an offense or aids, abets or coun-
23 sels, commands, induces or produces its commission, is punish-
24 able as a principal."

25 This means that not only is the person who actually

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2 commits an illegal act a principal punishable, but anyone who
3 aids and abets him in committing that illegal act is likewise
4 punishable.

5 Accordingly, you may find the defendant or defendants
6 guilty of the offense charged if you find beyond a reasonable
7 doubt that the offense was committed and that the defendant or
8 defendants aided and abetted in its commission.

9 In determining whether or not a defendant or defend-
10 ants aided and abetted in the commission of the offense you may
11 ask yourselves these questions:

12 Did he associate himself with the venture?

13 Did he participate in it as something he wished to
14 bring about?

15 Did he seek by his action to make it succeed?

16 If he did these things, then he is an aider and an
17 abettor. The mere association or friendship between a defend-
18 ant or defendants and an alleged principal is not sufficient
19 to establish one as an aider and an abettor. Moreover, mere
20 presence at the scene of a crime and knowledge that a crime is
21 being committed are not sufficient to establish that the de-
22 fendant aided and abetted the crime, unless you find beyond a
23 reasonable doubt that the defendant was a participant and not
24 merely a spectator.

25 With regard to the substantive counts, I want to

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2 charge you another theory of proof.

3 It is not essential to a finding of guilt on the
4 substantive offenses that the defendant or defendants physically
5 performed the specific acts constituting the crime charged nor
6 that he be an aider and an abettor. A defendant is guilty of a
7 substantive count charged if it was committed in furtherance of
8 and during the course of an unlawful conspiracy of which he was
9 a member.

10 I will define for you after our short recess, what
11 conspiracy is. I merely want you to understand now that a
12 conspirator is liable for the acts and statements of his co-
13 conspirators, provided they were made within the scope of the
14 unlawful agreement as he saw it during the pendency of the con-
15 spiracy and in furtherance of its objectives.

16 To find a defendant who did not physically perform
17 the acts specified in the crime charged guilty of a substan-
18 tive offense under this theory of proof, you must find beyond
19 a reasonable doubt the following:

20 First, that the defendant, who allegedly physically
21 performed the specific acts constituting the crime charged,
22 is guilty and was a member of the conspiracy.

23 Second, that the defendant who did not physically
24 perform the specific acts constituting the offense charged,
25 was a member of a conspiracy.

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2 Third, that the crime was committed in furtherance
3 of the conspiracy or its objectives.

4 If the above three factors are true beyond a reason-
5 able doubt, then the evidence is sufficient to show guilt.

6 A defendant need not physically perform the specific
7 acts constituting the substantive offense, nor need he have
8 knowledge of said acts to be guilty under this theory of proof.

9 I have reached the stage at which I am going to charge
10 you on conspiracy and I believe it would be helpful to you if
11 we did have a five-minute recess.

12 Again, don't start discussing this case and don't
13 make up your mind about it. You haven't heard all of the law,
14 and as I said before, every part of my charge is important to
15 you, to hear it all and to hear all of the charge rather than
16 each individual item of it.

17 If you will fall out, I hope you have ordered your
18 lunch, because what I intend to do is have lunch brought down
19 to you. It is going to save you some time in going out when
20 that time can be spent in here.

21 If you haven't already ordered your lunch, get the
22 balance of the orders in and we will have that ready for you
23 about a quarter to one.

24 (Jury left the courtroom.)

25 THE COURT: Would anybody have any objection if I

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2 talked to Mr. Walsh on an absolutely unrelated matter that
3 came to my attention last night?

4 MR. SACCO: NO.

5 MR. JACOBS: Absolutely not, your Honor.

6 MR. LANNA: No.

7 (Recess taken.)

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2 (In open court, jury present in the courtroom.)

3 THE COURT: I ask if you are all able to hear me
4 adequately, or should I speak louder?

5 JUROR NO. 9: A trifle louder.

6 THE COURT: I get the impression as I stand here
7 that I am yelling, which I don't like to do. So, if you
8 cannot hear, don't hesitate to say so, because it is im-
9 portant to you and I will try to speak a little louder.

10 Now we have come to the 1st count of the
11 indictment. I have done that for the reason that I think
12 you will be able to understand it more readily after having
13 heard my charge on the elements of the substantive offenses
14 charged.

15 Count 3 charges that, one, from on or about
16 March 16, 1970, up to and including the date of the
17 filing of this indictment, which was March 23, 1972, in
18 the Southern District of New York and elsewhere, Frank
19 Sacco, Benjamin Gentile and John Rhines, the defendants,
20 unlawfully, wilfully and knowingly did combine, conspire,
21 confederate and agree together and with each other and
22 with others to the grand jury unknown, to participate
23 in the use of extortionate means to attempt to collect
24 an extension of credit from James William Robbins, the
25 debtor; two, it was part of said conspiracy that the

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defendants would and did agree to use violence and other criminal means and the express and implicit threat of the use of violence and other criminal means to cause harm to the person, reputation and property of the debtor and others.

The conspiracy charge, as I have told you, is separate and distinct from the charges made in the substantive counts. This fact, however, does not preclude you from considering proof of an actual violation as evidence that a conspiracy existed.

In order to find a defendant guilty of the conspiracy charged in the 3rd count of the indictment you must find beyond a reasonable doubt as follows: First, that some time between March 16, 1970, and the date of the filing of the indictment, which was March 23rd, 1972, an agreement existed between any of the defendants on trial and any other person whether on trial or not; second, that it was part of this agreement to do any of the following: A, to make extortionate extensions of credit by making loans to James Sonny Robbins, that is, to make a loan with the understanding of the creditor and debtor at the time of the making of the loan that delay in making repayment, or failure to make repayment could result in the use of violence or other criminal

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means to cause harm to that person; B, to advance money or property pursuant to a partnership agreement or a profit-sharing agreement or as a loan, investment or otherwise, to Frank Sacco or others with reasonable grounds to believe that it was the intention of Frank Sacco or others to use the means so advanced directly or indirectly for the purpose of making extortionate extensions of credit or; C, to use extortionate means to collect and attempt to collect extension of credit, that is, to induce the repayment of the loan by means which involved the use, or an express, or implicit threat of the use of violence, or other criminal means to cause harm to the person, reputation or property of the debtor or his family.

In this regard you need not find that the conspiracy existed the entire time from March 16, 1970 -- Mr. Solomon, please -- in this regard you need not find that the conspiracy existed the entire time from March 16, 1970, to March 23, 1972. It is sufficient if it is shown to have existed for any part of that time. Third, that a defendant knowingly associated himself with the conspiracy; fourth, that one of the conspirators knowingly committed at least one of the overt acts set forth in the indictment at or about the time and place alleged.

Now, the overt acts alleged in this portion of

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the indictment are, in furtherance of said conspiracy and to effect the object thereof, the following overt acts among others were committed in the Southern District of New York and elsewhere: One, on or about April 24, 1970, Benjamin Gentile did receive a payment from James William Robbins; two, on or about April 30, 1970, Frank Sacco and Benjamin Gentile did meet with James William Robbins in Peekskill, New York; three, on or about June 5, 1970, Benjamin Gentile did meet with James William Robbins in Peekskill, New York; four, on or about December 6, 1971, Frank Sacco and John Rhines did meet with James William Robbins in Peekskill, New York; five, on or about December 10, 1971, John Rhines did meet with James William Robbins in Peekskill, New York; six, on or about January 21, 1972, Benjamin Gentile did meet with James William Robbins in Peekskill, New York.

Now, while the indictment charges in count 1 that the conspiracy began on or about March 16, 1970, and continued to the date of its filing, March 23, 1972, it is not essential that the government prove that the conspiracy started and ended on or about those specific dates. It is specific if you find that in fact a conspiracy was formed and existed for some substantial time within the period set forth in the indictment, and that at least one

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overt act was committed in furtherance thereof in that period.

Now, a conspiracy once formed is presumed to have continued until its objectives are accomplished or there is an affirmative act of termination by its members or otherwise terminated as for example by police intervention. Now, once a person is found to be a member of a conspiracy he is presumed to continue his membership until its termination, unless there is affirmative proof offered of withdrawal or disassociation.

Now, I will define conspiracy and proof of its existence. A conspiracy is a combination of two or more persons by concerted action to accomplish some unlawful purpose or to accomplish some lawful purpose by unlawful means.

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A conspiracy is a kind of partnership in criminal purpose in which each member becomes the agent of every other member. The gist of the effect is a combination, or agreement to disobey or to disregard the law.

Now, mere similarity of conduct among various persons and the fact that they may have associated with each other and may have assembled together and discussed common aims and interests, does not necessarily establish proof of the existence of a conspiracy.

However, the evidence in the case need not show that the members entered into any formal or express agreement, or that they directly by words spoken or in writing, stated among themselves what their object or purpose was to be, or the details thereof, or the means by which the object or purpose was to be accomplished.

That the evidence in the case must show, beyond a reasonable doubt in order to establish proof, that a conspiracy existed is that the members in some way or manner, or through some contrivance, positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan.

Proof of membership in a conspiracy, if you find that the Government has proved beyond a reasonable doubt, a reasonable doubt that a conspiracy as charged, did in fact exist, you must determine whether or not each individual was

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2 in fact a member of the conspiracy. You must do so without
3 regard to the statements and acts of the other alleged con-
4 spirators.

5 One may become a member of a conspiracy without full
6 knowledge of all the details of the conspiracy. On the other
7 hand, a person who has no knowledge of a conspiracy but happens
8 to act in a way that furthers some objective or purpose of the
9 conspiracy does not thereby become a conspirator.

10 Before the jury may find that a defendant or any
11 other person has become a member of a conspiracy, the evidence
12 in the case must show beyond a reasonable doubt that the con-
13 spiracy was knowingly formed and that the defendant or other
14 person who is claimed to have been a member, wilfully partici-
15 pated in the unlawful plan with the intent to advance or fur-
16 ther some objective or purpose of the conspiracy.

17 To act, or participate wilfully means to act, or
18 participate voluntarily and intentionally and with specific
19 intent to do something the law forbids, or with specific intent
20 to fail to do something the law requires to be done.

21 That is to say, to act, or participate with a bad
22 purpose, either to disobey or disregard the law. So, if a
23 defendant or any other person with understanding of the unlaw-
24 ful character of a plan, knowingly encourages, advises, or
25 assists for the purpose of furthering the undertaking or scheme.

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2 he thereby becomes a wilful participant.

3 In words, in effect, a conspirator, one who wilfully
4 joins an existing conspiracy is charged with the same point
5 as if he had been one of the originators or instigators of the
6 conspiracy.

7 In determining whether a conspiracy existed, the jury
8 should consider the actions and declarations of all of the alleged
9 participants.

10 However, in determining whether a particular defend-
11 ant was a member of the conspiracy, if any, the jury should
12 consider only his acts and statements. He cannot be bound
13 by the acts or declarations of other participants until and
14 unless it is established that a conspiracy existed and that
15 he was one of its members.

16 Now, if you do find beyond a reasonable doubt from
17 the evidence in the case, that a conspiracy existed and that a
18 particular defendant was one of the members, then the statements
19 thereafter knowingly made and the actions thereafter knowingly
20 done by any person likewise found to be a member, may be con-
21 sidered by the jury as evidence in the case as to the defendant
22 found to have been a member, even though the statements and
23 actions may have occurred in the absence and without the
24 knowledge of the defendant provided such statements and actions
25 were knowingly made and done during the continuance of such

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2 conspiracy and in furtherance of some objective or purpose
3 of the conspiracy.

4 Otherwise any admission or incriminatory statement
5 made, or act done outside of court by one person may not be
6 considered as evidence against any person who was not present
7 and did not hear the statement made or see the act done.

8 Therefore, statements of any conspirator which are
9 not in furtherance of the conspiracy, or made before its
10 existence, or after its termination, may be considered as evi-
11 dence only against the person making them.

12 The guilt of a conspirator is not given by the
13 extent or duration of his participation in the conspiracy or
14 whether he had knowledge of all of its operations. Even if one
15 joined the conspiracy after it was formed and was engaged in
16 it to a degree more limited than that of other co-conspirators,
17 he is equally culpable so long as he was a conspirator.

18 Each member of a conspiracy may perform separate and
19 distinct acts at different times in different places.

20 Thus some conspirators may play major roles while
21 others play minor roles.

22 In other words, it is not required that a person be
23 a member of the conspiracy from its very start. He may join
24 it at any point during its progress and be held responsible for
25 all that has been done before he joined, and all that may be

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2 done thereafter during its existence and while he remains a
3 member.

4 Simply stated, using the partnership analogy, by
5 becoming a partner he assumes all the liabilities of the
6 partnership, including those that occurred before he became a
7 member.

8 Thus if you find that a particular defendant is a
9 conspirator then however limit his role in furthering the
10 objectives of the conspiracy, he is responsible for all that
11 was done in furtherance thereof during or before its continu-
12 ance.

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All of the conspirators need not be acquainted with each other. They may not have previously associated together. A defendant may know only one other member of the conspiracy, but if he enters into an unlawful agreement with that other member of the conspiracy he becomes a party thereto. The question is, did a defendant join the others with awareness of at least some of the basic purposes and aims of the conspiracy? If so, then he adopts as his own the past and the future acts of all the other conspirators.

If you find circumstances of intrigue or deviousness or attempts by a defendant to conceal the true nature of a transaction, this may be considered as circumstantial evidence of knowledge of unlawful purpose. So, too, any attempt to conceal or fabricate evidence may be considered by you as showing such knowledge.

In your consideration of the evidence in the case as to the offense of conspiracy charged, if it appears beyond a reasonable doubt from the evidence in the case that the conspiracy alleged in the indictment was wilfully formed and that the defendant wilfully became a member or that a defendant wilfully became a member of the conspiracy at its inception or afterwards and that thereafter one or more of the conspirators

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2 knowingly committed one or more of the overt acts charged
3 in furtherance of some object or purpose of the conspiracy,
4 then there may be a conviction even though the conspirators
5 may not have succeeded in accomplishing their common
6 object or person and, in fact, may have failed in so
7 doing.

8 The extent of any defendant's participation,
9 moreover, is not determinative of his guilt or innocence.
10 A defendant may be convicted as a conspirator even though
11 he may have played only a minor part in the conspiracy.

12 I mentioned before overt acts as charged in the
13 indictment. An overt act is any act knowingly committed
14 by one of the conspirators in an effort to effect or
15 accomplish some object or purpose of the conspiracy.
16 The overt act need not be criminal in nature if considered
17 separately and apart from the conspiracy. It may be as
18 innocent as the act of a man walking across the street or
19 driving an automobile or using a telephone. It must,
20 however, be an act which follows and tends toward accomplish-
21 ment of the plan or scheme and must be knowingly done in
22 furtherance of some object or purpose of the conspiracy
23 charged in the indictment.

24 I previously read to you what the overt acts
25 set forth here were.

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2 It is not necessary in connection with the
3 overt acts for the government to prove that each member
4 of the conspiracy committed or participated in any
5 particular overt act since the act of anyone done in
6 furtherance of the conspiracy becomes the act of all the
7 other members. The government is not required to prove
8 each of the overt acts as alleged in the indictment.
9 It is sufficient if it proves the commission of at least
10 one of the acts in the Southern District of New York,
11 which includes the City of New York and the County of
12 Westchester, at or about the time alleged, although in this
13 case the government claims it has proved each act set forth
14 in the indictment. The overt act need not have occurred
15 at the precise time or place as alleged.

16 You have heard me mention on a number of
17 occasions in this charge the words "knowledge and intent."
18 I charged them as to each of the counts, but I think I
19 would do well to go over it further here to be of some
20 help to you, I hope, in your deliberations.

21 Knowledge and intent exist in the mind. As
22 we all realize, it is not possible to look into a man's
23 mind to see what went on or look into his head and see
24 what went on. The only way you have for arriving at a
25 decision on these questions is for you to take into

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consideration all the facts and circumstances shown by the evidence, including the exhibits, and to determine from all such facts and circumstances whether the requisite knowledge and intent were present at the time in question. Direct proof is unnecessary. Knowledge and intent may be inferred from all the surrounding circumstances.

Insofar as intent is concerned, you are instructed that a person is presumed to intend the natural and probable or ordinary consequences of his acts.

In addition, I charge you that a conspiracy to commit a particular substantive offense cannot exist without at least the degree of criminal intent necessary for the substantive offense itself.

Those are the specific parts of my charge and I wish to give you a few comments.

You have been told several times that there are 7 counts in the indictment remaining. Each of those counts charges one or more of the defendants with a separate crime. Each offense and the evidence pertaining to it should be considered separately.

The fact that you may find all or some of the accused guilty or not guilty of one of the offenses charged should not control your verdict as to any other offense charged against any of the defendants. It is your duty

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1 to give separate and personal consideration to the case of
2 each individual defendant. When you do so you should
3 analyze what the evidence in the case shows with respect
4 to that particular individual, leaving out of consideration
5 entirely any evidence admitted solely against some other
6 defendant or defendants. Each defendant is entitled to
7 have his case determined from evidence as to his own
8 acts and statements and conduct and any other evidence in
9 the case which may be applicable to him.
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2 My next instruction is insofar as punishment is con-
3 cerned.

4 By that I do not mean to convey to you that your'
5 finding should be guilty. I have told you in the beginning,
6 and I can't repeat it often enough, not from any particular
7 charge in here are you to decide this case but from the charge
8 as a whole, nor are you to gather from anything that I have said
9 in any way how I feel about the case.

10 But it is my obligation to charge you that if in your
11 deliberations the question of guilt is determined, please do
12 not discuss the question of possible punishment. That is a
13 matter, punishment in the event of a determination of guilt,
14 which rests solely with me.

15 As I said before, we have separate and joint functions
16 here. I charge you the law, you tell us what the facts are based
17 upon your determination. If guilt is found, that is for you
18 to say, and what is to be done is up to me to say alone, and you
19 should not take that into consideration in any respect in
20 connection with your deliberations.

21 If you discuss it among yourselves you are encroaching
22 on my function and I ask you not to do it.

23 Your function is to consider the facts and to determine
24 the facts and my function is to pass upon the law and in the
25 event of conviction, to impose sentence.

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2 If you find on all the evidence that the evidence
3 respecting a defendant leaves a reasonable doubt as to his
4 guilt, you should not hesitate for a moment to return a ver-
5 dict of acquittal as to that defendant.

6 However, on the other hand, if you find beyond a
7 reasonable doubt that the law has been violated as charged,
8 you should not hesitate because of sympathy or because of any
9 other reason, to render a verdict of guilty.

10 Your verdict as to each defendant and each count,
11 must represent the considered judgment of each juror. In
12 order to return a verdict it is necessary that each juror agree
13 thereto.

14 In other words, your verdict must be a unanimous if
15 you are to return a verdict.

16 It is your duty as jurors to consult with one another
17 and to deliberate with a view to reaching an agreement, if you
18 can do so without violence to individual judgment.

19 Each of you must decide the case for yourself, but
20 do so only after an impartial consideration of the evidence
21 with your fellow jurors.

22 In the course of your deliberations do not hesitate
23 to re-examine your own views and change your opinion if you
24 are convinced that your opinion is erroneous. Do not surrender
25 an honest conviction as to the weight or effect of evidence

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2 solely because of the opinion of your fellow jurors or for
3 the mere purpose of returning a verdict.

4 You are not partisans. You are judges, judges of the
5 facts. Your sole interest is to ascertain the truth from the
6 evidence in the case.

7 If it becomes necessary during your deliberations to
8 communicate with the Court, you may send a note by a bailiff,
9 signed by your foreman, or by one or more members of the jury.
10 No member of the jury should ever attempt to communicate with
11 the Court by any means other than a signed writing.

12 The Court will never communicate with any member of
13 the jury on any subject touching the merits of the case other-
14 wise than in writing or orally here in the Court.

15 You will note from the oath about to be taken by the
16 bailiffs that they, too, as well as all other persons, are
17 forbidden to communicate in any way or manner with any member
18 of the jury on any subject touching the merits of the case. You
19 are never to reveal to any person, not even to the Court, how
20 the jury stands numerically or otherwise on the question of
21 the guilt or innocence of any one of the defendants until after
22 you have reached a unanimous verdict.

23 Again, and I know you may be bored by hearing it, but
24 it is important, that nothing said in these instructions,
25 nothing in any form of verdict prepared for your convenience,

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2 is to suggest or convey in any way or manner any intimation as
3 to what verdict I think you should find. What the verdict
4 shall be is your sole and exclusive duty and responsibility.

5 It is proper at this time, as it was throughout this
6 trial, if any attorney had any objection to anything that I have
7 said on the law or any additional instructions, I should give
8 to you, that this be done at this time. For this reason, I
9 am going to ask you to file out and we will have a short session
10 on questions of law here, after which, I will call you back in
11 and may further instruct you or may not, and if nothing else
12 I will have to release our alternate juror.

13 Don't start discussing the case yet. In just a very
14 few minutes you will be able to give your full attention and
15 your full discussion. But if you will just file out for a
16 few minutes, we will hear a few questions of law and we will
17 ask you to come back in before you start to deliberate.

18 (The jury left the courtroom.)
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA.,	:	72 Cr. 332
-against-	:	
BENJAMIN GENTILE,	:	MEMORANDUM
	:	<u>DECISION</u>
Defendant.	:	

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GAGLIARDI, D. J.

Defendant, Benjamin Gentile, moves to have his conviction for violations of the federal extortion laws, 18 U.S.C. §891, 892 (Supp. 1976), set aside on the ground that evidence used against him at trial was the result of illegal wiretapping. Gentile was found guilty in this court after a trial by jury of conspiring with co-defendants Frank Sacco and John Rhines to collect loans made to James Robbins by using threats of violence. It is now undisputed that between September 15, 1969 and April 6, 1970, the Westchester County District Attorney's Office maintained a wiretap on Sacco's phone, which for the purposes of this motion is conceded to be illegal. Gentile claims that the government used information obtained from this illegal wiretap in the prosecution of its case against him and that thus his conviction must be set aside. This court does not agree.

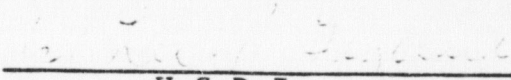
Even assuming that Gentile has standing to challenge the use of information obtained from these wiretaps, his motion must be denied as this court finds that that information was not used by federal authorities in connection with the prosecution of this case. William Walsh, the F.B.I. agent in charge of the investigation of the Robbins loan, testified at a post-trial hearing in this case, as well as at similar hearings in other loan sharking cases involving Sacco in Baltimore and Orlando, that at no time did he use in connection with his investigation any information obtained by state authorities from wiretaps of Sacco's phone. He also testified that at no time in the course of his investigation did he exchange information of any consequence relating to this case with Westchester County officials, nor was he even aware of the existence of the Westchester County wiretaps until several months after they had been removed. In fact, in testimony which this court finds fully credible, Walsh stated that because of uncertainty as to the legality of these wiretaps, he attempted specifically to avoid any information that might have been uncovered as a result of them. While there is some testimony by former New York State police officials at other hearings, which by stipulation is part of the record here, that information from the wiretaps was passed to federal authorities, the credibility of these officials was significantly impeached, and

that testimony is contradicted by the sworn statements of other state and federal authorities.

Gentile contends that since Walsh admits that he received certain information in connection with this investigation from the New York State Liquor Authority ("S.L.A."), it can be inferred that he obtained information from the illegal wiretaps even though Walsh himself may have been unaware of the source of that information. At the hearing before this court no evidence was presented to indicate that any information in the S.L.A. files came from the illegal wiretaps. More importantly, the government showed that the information available to the F.B.I. from the S.L.A. reports had been previously obtained from other independent investigative sources of the F.B.I. For example, Agent Walsh testified that information about the opening of Dooley's Bar which Gentile claims was the fruit of the illegal wiretaps, came from federal agents operating in the area. Similarly, information about a \$500 check from Robbins to one of Sacco's associates came originally from Robbins and only later from the S.L.A.

Under these circumstances, this court believes that the government has sustained its burden of showing that the information it received in connection with this case came from untainted sources. Alderman v. United States, 394 U.S. 165, 183 (1969); Nardone v. United States, 308 U.S. 338, 341 (1939). Defendant's motion to set aside conviction is thus denied.

So Ordered.


U.S.D.J.

Dated: New York, New York
July 21, 1976.

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2 DEFENDANT SACCO: I'm sorry, your Honor.

3 THE COURT: Don't apologize. That's all right. You
4 have a right to make that kind of a motion. So the reduction
5 of bail is academic. It's been taken care of.

6 The motion of May 22, 1972 for severance as to the
7 defendants, I have read the motion and the supporting papers.
8 Does anyone else wish to be heard? Mr. Broderick?

9 MR. BRODERICK: No, your Honor.

10 MR. LANNA: No, your Honor.

11 THE COURT: Mr. Jacobs?

12 MR. JACOBS: All I would like to say, your Honor,
13 in light of what has transpired this morning, the defendant
14 is now acting on his own behalf, your Honor, and is actually
15 on trial pro se. I would think that the co-defendants are
16 prejudiced, your Honor, in that what might transpire at the
17 trial, and I would move for a severance on behalf of my
18 client, the defendant Gentile.

19 THE COURT: This is an indictment arising out of a
20 ~~concert~~, it is a conspiracy, and under those circumstances
21 the motion is denied.

22 MR. LANNA: If your Honor please, I will reserve
23 as to severance depending on the testimony during the course
24 of the trial, which I think really is a needless reservation.

25 THE COURT: It is.

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2 I didn't make it returnable on the 19th, I changed it to the
3 20th.

4 If we have to do it later, why, we have to defer it
5 or adjourn it for another day.

6 If we have to we will do that, too.

7 Mr. Jacobs, do you have any motions?

8 MR. JACOBS: Yes, your Honor.

9 I wanted to make a motion at this time, renew a
10 motion on the basis that the Government is going to put in
11 evidence as to Mr. Sacco's bad reputation, as I say, his
12 reputation for violence in the community.

13 Your Honor, I am not arguing whether that is rele-
14 vant or not now, but assuming that comes in, your Honor, I
15 think it is highly prejudicial to my client. My client has
16 nothing to do with Mr. Sacco's reputation or what Mr. Sacco
17 has done in the past or what it is said he has done in the
18 past.

19 THE COURT: The Second Circuit has indicated how that
20 has to be handled in the case cited in the brief of Mr.
21 Broderick and I intend to follow what the Second Circuit set
22 forth there.

23 MR. JACOBS: I would review my motion for a severance.
24 I don't think my defendant can get a fair trial.

25 THE COURT: I will deny the motion.

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2 ment. The testimony will show that Mr. Robbins never went
3 to the police on his own.

4 Mr. Gentile will testify in this trial that he acted
5 on my instructions to collect monies from Mr. Robbins which were
6 due to me as per the understanding we had. He will further
7 testify that he never threatened Mr. Robbins in any manner.

8 Ladies and gentlemen of the jury, as part of my defense
9 I will put witnesses on the stand that will testify about loan
10 transactions, and business participations that they had with
11 me that far exceeded the amount of money extended to Mr.
12 Robbins and they did not have any difficulties with me.

13 I am quite sure that the Government is going to
14 attempt to bring into evidence hearsay information regarding
15 my reputation. Please evaluate the source that it comes from.
16 I am quite sure that Judge Gagliardi will instruct you on the
17 law as to the reputation testimony.

18 Please listen to him carefully. And I ask of you to
19 keep an open mind.

20 Ladies and gentlemen of the jury, there are three
21 defendants in his case and individual justice should be rendered
22 to each one of us. I feel responsibility for the indictment
23 of my two co-defendants and I am positive that the testimony will
24 reveal that they had nothing to do with any threats against
25 Mr. Robbins.

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2 we selected this jury very quickly and I am sure you are
3 going to, at the end of this case, deliberate fairly,
4 equitably for the person I represent, John Rhines.

5 Thank you.

6 THE COURT: Thank you, Mr. Lanna.

7 All right, members of the jury, as I told you
8 before, we are going to take about a 10 or 15-minute recess.

9 I am going to probably get on your nerves by
10 repeating this. Don't discuss the case while you are inside
11 at any recess. If I should fail to advise you of that,
12 keep it in mind. I know it does get monotonous saying it
13 time and time again, but it is one of the most important
14 things, one of the most important instructions I can give
15 you. Don't discuss this case among yourselves or with
16 anybody else until you have heard the entire case.

17 All right, you may file out and we will resume
18 here about 20 minutes to 12.

19 (The jury left the courtroom.)

20 THE COURT: Mr. Jacobs?

21 MR. JACOBS: Yes, your Honor.

22 Your Honor, at this time I would move for a
23 mistrial based on Mr. Sacco's statement in his opening that
24 Mr. Gentile was going to take the witness stand and testify
25 to certain facts.

1 tp

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2 We have never told Mr. Sacco, neither myself nor
3 Mr. Gentile, that Mr. Gentile has any intentions of
4 testifying. In fact, Mr. Gentile at this time does not
5 intend to testify, your Honor.

6 I submit that this jury has been told that he is
7 going to testify and he is going to testify to certain
8 facts and I don't know how the jury can just forget about
9 that. They will have that in their mind and the time may
10 come and they will wait, and where is Mr. Gentile? He
11 doesn't testify.

12 This is what I pointed out to your Honor before,
13 the problems of going to trial with Mr. Sacco. In addition
14 to a mistrial, I would renew my motion for a severance.

15 THE COURT: All right. I will deny your
16 motion.

17 We are all aware of the complications when there
18 are multiple defendants, and there is adequate law in this
19 respect, and on the basis of those authorities I will deny
20 your motion for a mistrial and your motion for a severance.

21 MR. JACOBS: Exception.

22 THE COURT: Very well.

23 Any other motions?

24 All right, gentlemen.

25 MR. BRODERICK: Your Honor, I just have two

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1344

were left out, but it was irrelevant to this case. It had nothing to do with it. We only took excerpts out of it. I don't want you to think that there was information in there that could have hurt me concerning this case, because if there was I am sure he would have read it to the jury.

We had 8 counts in this indictment originally. Now it is down to 7. The \$500 transaction was dismissed as a matter of law because the Judge saw that there was no evidence to support that and he just says, "That's out."

That \$500 check that is in evidence here has nothing to do with this case any more, excepting for the conspiracy which they allege started in 1970, March of 1970.

Who did I conspire with, myself?

Mr. Gentile wasn't present, Mr. Rhines wasn't present. He didn't enter the picture until December of 1971. The government would want you to believe that we entered into a conspiracy to use extortionate means on Mr. Robbins. I say to you that there was no conspiracy, ladies and gentlemen. This \$500 check has nothing to do with it. It is out of the case.

You remember a question I asked him pointblank and I was criticized by co-counsel because they said,

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1345

2 "If he had given a wrong answer you would be convicted."

3 MR. BRODERICK: Your Honor, that's not --

4 THE COURT: It is the jury's recollection that
5 controls.

6 MR. SACCO: If you can recollect the question
7 I asked him was, "Mr. Robbins, at the time the loan was
8 made, was there an understanding between you and I that
9 failure to make repayment would cause harm to you, your
10 person and your reputation? Yes or no?"

11 And what was his answer? No. Before I
12 gave him a chance to say anything else he says, "No."

13 If you can also recall, ladies and gentlemen
14 of the jury, I told you that this was a technical statute
15 that was passed by Congress. Even though I thought it
16 was wrong, Congress passed it and that's the law. That's
17 what we have to go by.

18 The way this statute was enacted, if you lend
19 your brother \$500 and your brother goes and makes a
20 complaint that you threatened him, he could be indicted
21 under this statute.

22 I am sure the Judge will charge you as to the
23 law on this statute.

24 Now let us go to count 2. Let us forget
25 count 1. You have to take it right out of your minds.

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1346

It doesn't exist any more.

Count 2 I am charged with making an extortionate extension of credit on May 5, 1970, which was approximately a month later -- two months later, March, April, May.

But if you can recall Mr. Robbins' testimony -- I am bad at dates, but he's worse. He says the second loan was six months later.

I could read you his testimony from the transcript, but I am quite sure you can remember. He didn't say it was May, he said it was some time in September.

Then with the leading of the U.S. Attorney here he refreshed his recollection, he got him back to May where the second loan took place.

Let us talk about this second loan. If you can recall, Mr. Robbins testified that he had told Mr. Gentile, "I need a thousand dollars. Can you ask Frank for it?"

Then he says, "Yes, I'll talk to the boss."

I objected to "the boss."

So Benny spoke to me.

He also testified that I went up there at a later date, a week later, and I was with Mr. Gentile and I says to him, "Here's a thousand," and he says, "No, I don't want it. I don't want to take it."

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2 He says I forced it on him. I don't know how
3 anybody could force money on anybody. I'd like to have
4 people force it on me.

5 But one important thing I want you to remember
6 with the second loan, ladies and gentlemen. There is no
7 testimony in the transcript -- there is no testimony of
8 Mr. Robbins anywhere, or any other witnesses, that when
9 that second loan was made that there was the understanding
10 that failure to make repayment on that loan could cause
11 harm to him. The same as the exact first one. There
12 is no difference. But the Judge felt he had to leave that
13 up to the jury. He says, as a matter of law it couldn't
14 be dismissed. You have to make that determination.
15 And I say to you that there is no testimony in this case
16 that the government could say that Mr. Robbins had that
17 understanding with me.

18 What they would like you to believe is that he
19 had his own understanding and if you can remember in my
20 opening I told you to watch that phraseology, because it's
21 very important. I didn't plant that in his mind.

22 Now we go to count 3, and that charges using
23 threats -- no, count 3 is the conspiracy count. Where
24 it says that me, Mr. Gentile and Mr. Rhines conspired with
25 each other and we had done certain overt acts in further-

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1348

ance of the conspiracy.

I say to you that there was no conspiracy in this case. Whatever Mr. Gentile did, he did at my request. What Mr. Rhines did he did at my request. We didn't conspire to put fear into this guy or use extortionate means to collect any money from him. If I had the -- if I had the opportunity I would have elicited this from Mr. Robbins. I was precluded from it.

MR. BRODERICK: You see, your Honor.

MR. SACCO: We have a bunch of days here where Mr. Robbins said he met us, one was on April 24th, he said he received the payments from -- he said he met Mr. Gentile, another one was on April 30th that he met Mr. Sacco and myself -- I mean Mr. Gentile and myself, that on June 5, 1970, Mr. Gentile did meet with James William Robbins, that on December 6th Frank Sacco and John Rhines did meet with William Robbins in Peekskill, and then on December 10th John Rhines met with William Robbins.

Nobody's denying that these -- that we met with these people. We are not trying to prove to you the jury that there was no such meetings. There were probably more meetings that are not even in here. Maybe there's 50 more times we met with him. There could be a hundred more times that we called him on the telephone. I can't recall every day.

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1351

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2 January 3rd and January 21st, and the law is such that
3 even if I wasn't present that Mr. Gentile went and Mr.
4 Rhines went and I wasn't present, I am guilty as an aider
5 and abetter if in fact they did use extortionate means
6 to collect.

7 I didn't even have to be there. But if one
8 of them went on my behalf, I am guilty. That's the way
9 the law works, and I am sure the Judge will tell you that.

10 I don't know what Mr. Rhines says to him when
11 he met him, and I don't know what Mr. Gentile said. But
12 Mr. Rhines was on the stand and he told you what he said,
13 and I believed him. And you should believe him.

14 Let's talk about Mr. Rhines for a second.
15 How did he get involved? Did you ever hear guilty by
16 association. That's what happened to this poor guy.
17 He's guilty by association. It could have been any one
18 of you jurors here indicted if you knew me outside.

19 I asked him to do me a favor. I was out of
20 town, he told you I was in Florida. Go up and get the
21 money that he promised to pay me. The agreement, pick up
22 the agreement. And here he is now on trial before you.

23 The same thing with Mr. Gentile. If you
24 can recall there's been a lot of inconsistent testimony
25 here by Mr. Robbins. He had the audacity to take that

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1352

stand today and tell you he was never in Yonkers. If he wasn't in Yonkers, ladies and gentlemen, at that junk yard, then three or four other people committed perjury on that stand. Who do you believe, him or the three other people? And he's an interested party in this case. The other people are disinterested parties. They had no reason to perjure themselves. All he had to do today was say "Yes, I was there," that would have ended it. But he lied.

MR. BRODERICK: Your Honor, I will just object to the fact that he is an interested party.--

THE COURT: Yes. He is not an interested party in the sense in which an interested party usually is. He is not a party to this lawsuit, Mr. Sacco.

MR. SACCO: I don't want to argue the law, your Honor. I will let you present the law to them as you say it should.

THE COURT: Very well.

MR. SACCO: If you are not a good liar it's pretty hard to remember. And I say he's a bad liar. He comes up with a story, "I told him \$9000," he testifies to here, but yet in all the reports when Mr. Jacobs cross-examined him, it was \$4000, \$4500, and he insisted on the stand, he said 9000. But the agents with the lip readers

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Iodice-cross

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MR. BRODERICK: Your Honor, at this time could I have a side bar conference?

THE COURT: Yes.

(At the side bar.)

MR. BRODERICK: I have no objection to this line of questioning at all, your Honor, but he is opening the door and I am now going to be stuck with the inference here of what happened with these tapes.

THE COURT: Sure you are.

MR. BRODERICK: And it's coming out now and I am going to be stuck.

THE COURT: Don't worry about it. If he brings it out he opens the door himself. There is no reason to object to it. When you put your testimony in it comes in. He has been advised. He has chosen to proceed in this fashion, and he, as far as he is concerned, has an excellent motive for it and I can't help it.

But, as far as putting them in, that is something else.

MR. JACOBS: Your Honor, on behalf of the defendant Gentile, in light of what Mr. Sacco is doing, I renew my motion for a mistrial and my motion for severance.

THE COURT: The motion is denied.

MR. LANNA: If your Honor please, I am going to

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2 MR. BRODERICK: Thank you very much. I don't
3 see it. I will argue it some other time.

4 MR. JACOBS: Your Honor, exactly with what
5 has happened, what has happened here this morning, your
6 Honor, is through the defendant Sacco incompetent testi-
7 mony has come into the case which prevails against all
8 three defendants, your Honor. We objected to it. It
9 comes in anyway.

10 I don't think because a defendant is asking
11 for something that is incompetent evidence, hearsay
12 evidence, it should come in. If the government asks
13 for it they couldn't bring it in. Why should the
14 defendant be able to bring it in and hurt the other two
15 defendants, your Honor, just because he is representing
16 himself? I mean, this has pervaded the entire trial.

17 THE COURT: Let me suggest to you and we
18 cannot go along and try every separate defendant individually,
19 when there are multiple defendants.

20 MR. JACOBS: This is unique. How often does
21 a defendant represent himself in a multi-defendant case?
22 You have two or three cases a year maybe.

23 THE COURT: It is happening here and he is
24 entitled to counsel.

25 MR. JACOBS: I renew my motion for severance.

1 tp

2 THE COURT: I deny the motion.

3 MR. LANNA: Judge, may I add for the record a few
4 comments along these lines?

5 THE COURT: Sure, you may, but I am aware of
6 the problem and you have made your objections and I don't
7 know that it does any good to persist in argument about it.
8 You have made your objections and I have ruled on them and
9 I am fully aware of what is going on, I hope, on this
10 trial.

11 MR. LANNA: Only because of the latter portion
12 of your Honor's remarks regarding the fact that three
13 people in a conspiracy should be tried together, I think
14 now we have gotten to a point where, you know, each of
15 these defendants is entitled to a fair trial and although --
16 don't misunderstand me, I think your Honor is bending over
17 backwards here certainly to give a fair trial to Mr.
18 Sacco and it is his right to defend himself, but I think
19 on the other hand what is happening is that the other
20 defendants are not getting a fair trial because of the
21 testimony as it is developing through that particular
22 type of cross-examination.

23 I think we have to weigh these things and
24 when they are not getting a fair trial then, of course,
25 I think a motion to sever would be in order.

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3 THE COURT: As I say, I am aware of your problem.
4 You have made the objections and it is not just being brushed
5 out. I am considering it, but I am also considering
6 other factors that have led me to the conclusion that
7 I have to deny your motion for severance, really.

8 MR. LANNA: If your Honor please, in addition to
9 that, forgetting that for a moment --

10 THE COURT: I won't forget it because it is
11 foremost in my mind.

12 MR. LANNA: Getting away from that for a moment,
13 I am somewhat disturbed from what occurred this morning
14 through the testimony of Agent Reutter.

15 I served and filed a demand for a bill of
16 particulars and discovery by motion dated April 18th of
17 1972. In fact, this was directed toward your Honor,
18 who has had this case from its very inception.

19 Pursuant to my request for discovery and in-
20 spection, more specifically pursuant to Rule 16 --

21 THE COURT: Just let me get your demand here.

22 All right, I have it here, I believe. It is
23 dated April 18th?

24 MR. LANNA: Yes, sir.

25 THE COURT: All right. What page and what item?

MR. LANNA: Let us say on the third page of

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839

2 to proceed?

3 MR. SACCO: At this time, your Honor, I would ask
4 the Government to produce the garbled tapes.

5 MR. BRODERICK: We have the tapes here, your Honor.

6 MR. SACCO: I would like to hear them before I put
7 my witness on, your Honor. I think I am entitled to hear them.

8 MR. BRODERICK: Your Honor, I refer you to page 86 of
9 the transcript of September 14, 1972, wherein the defendant
10 Sacco stated, "Mr. Sacco, your Honor, I withdraw the previous
11 application to hear the tapes."

12 "THE COURT: You do not want to hear the tapes?

13 "MR. SACCO: No, your Honor.

14 "THE COURT: Mr. Solomon, have you advised Mr. Sacco
15 with respect to this question of hearing the tapes or not?

16 "MR. SOLOMON: We discussed it and after discussion
17 he came to his own conclusion."

18 THE COURT: All right. I will deny your application,
19 Mr. Sacco. I will not have any trifling with this court's time.

20 MR. SACCO: I am not trifling with the court's time,
21 your Honor.

22 THE COURT: I am not--

23 MR. SACCO: If you were to--

24 THE COURT: Mr. Sacco, you are being addressed by
25 the Court. Your motion is denied. Call your witness.

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2 MR. SACCO: I have a further application to make,
3 your Honor.

4 THE COURT: And for the record, I want to indicate that
5 in the opinion of this Court and the basis of the conduct of
6 this trial by Mr. Sacco, that I believe that this is a frivolous
7 request in order to obtain additional time just for his own
8 purpose.

9 MR. SACCO: Before--

10 THE COURT:, That's all I want to have, Mr. Sacco,
11 your next application.

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841

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2 MR. SACCO: Can I get into the record what I
3 want to say, or are you depriving me of that?

4 THE COURT: No, your next application, Mr.
5 Sacco.

6 MR. SACCO: My next application is I want to
7 respond to what you just said.

8 THE COURT: I refuse to do it.

9 MR. SACCO: Let the record so indicate.

10 THE COURT: The record has so indicated that.
11 I believe I have given you all the latitude in the world
12 to conduct your case in this way. In the way that you
13 wanted to do it. But there comes a time when that has to be
14 restricted, and I believe when you have exceeded the bounds
15 of what has been given to you, the liberty that has been
16 given to you in this case, then I must insist that we pro-
17 ceed with this case.

18 I want you to have your next witness, please.

19 MR. SACCO: At this time I would like to declare
20 Mr. Walsh a hostile witness, your Honor.

21 THE COURT: All right. You call him as a witness.
22 All right, Mr. Walsh, will you take the stand,
23 please.

24 Would you bring the jury in, please.

25 MR. BRODERICK: Your Honor, can I --

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Walsh-direct

858

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2 MR. BRODERICK: I object, your Honor.

3 THE COURT: Sustained.

4 Q Did you ever tell anybody, Mr. Walsh, that Mr.
5 Gentile was a hoodlum and a gangster?

6 MR. BRODERICK: I object to that, your Honor.

7 THE COURT: Sustained.

8 Q Mr. Walsh, do you have any knowledge of the
9 Westchester District Attorney's office of White Plains
10 tapping various telephones that were associated with me?

11 MR. BRODERICK: I object, your Honor.

12 THE COURT: Sustained.

13 MR. SACCO: Your Honor, this would be part of
14 the offer of proof --

15 THE COURT: Well, you do that in the absence
16 of the jury. You remember what you have to do, and do it
17 in the absence of the jury.

18 Q Mr. Walsh, do FBI agents like yourself get
19 particular credit for any assignment that they are handling?

20 MR. BRODERICK: I object, your Honor.

21 THE COURT: Sustained.

22 Q Mr. Walsh, are you concealing any wiretapping
23 or electronics surveillance because it was illegal?

24 MR. BRODERICK: I object, your Honor.

25 THE COURT: Sustained.

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Walsh-direct

866

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2 A No call had been received as to when he was
3 supposed to talk to you when I interviewed him.

4 Q And after he had received this call, he told you
5 that I was to meet him at Benny's Charcoal Pit, is that
6 correct?

7 A That's right.

8 THE COURT: Next question, please.

9 Q Mr. Walsh, at the time you met Mr. Robbins on
10 December 6, 1971, did you advise Mr. Robbins of his rights?

11 MR. BRODERICK: I object, your Honor.

12 THE COURT: Sustained.

13 Q Mr. Walsh, isn't it a fact that Mr. Robbins
14 told you that Mr. Benny Gentile had called several times
15 prior to the meeting at Benny's Charcoal Pit and Benny
16 Gentile was the same person that he had previously identified
17 from a group of photographs?

18 MR. BRODERICK: I object, your Honor.

19 THE COURT: Sustained.

20 Q Had Mr. Robbins identified Mr. Gentile at any
21 time with you, Mr. Walsh?

22 MR. JACOBS: Objection.

23 THE COURT: Sustained.

24 Q Prior to December 6, 1971, did you ever show
25 any photographs to Mr. Robbins?

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Walsh-direct

867

MR. BRODERICK: I object, your Honor.

THE COURT: No, overruled.

A Yes, I had.

Q And what was that date, Mr. Walsh?

A It was some time in September, 1971.

Q Was there any other agent with you at that time, when you showed these photographs?

A I think I was alone.

Q Did you make a report of that interview at that particular day?

A I don't think I made any report because there was no violation that was elicited from this conversation.

Q How many photographs did you show him at that time?

A Nine, ten, twelve.

Q Was Mr. Gentile's photograph included in there?

MR. JACOBS: Objection.

THE COURT: Sustained.

Q Was my photograph included in them?

MR. BRODERICK: Objection, your Honor.

MR. SACCO: Your Honor, I am asking him about myself.

THE COURT: Please. I am aware of that. I am aware of that.

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Walsh-direct

871

(Record read.)

THE COURT: I am going to sustain the objection as to form, Mr. Sacco. You will have to rephrase the question.

MR. SACCO: Your Honor, I am a layman. I don't know how to get these things in. I have to try to get them in the best way I can. I need some help from the Court. If I am doing it wrong, your Honor, guide me.

THE COURT: No. I suggest that you consult with Mr. Solomon as to the proper way to phrase that question. I am not here to guide you, I am not here to guide the prosecutor, I am here to preside impartially on this case.

MR. SACCO: May I have a minute with Mr. Solomon, please?

THE COURT: Yes, you may.
Would you like a few minutes and we will take a recess?

MR. SACCO: Yes, your Honor.

THE COURT: All right, we will take a 10-minute recess.

(The jury left the courtroom.)

MR. LANNA: Will your Honor permit me to --

THE COURT: Yes, I would. Yes, I would permit

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Walsh-direct

872

1 you to --

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3 MR. LANNA: I want to make a motion again, if
4 your Honor please, for a severance.

5 THE COURT: May I suggest this, that you and Mr.
6 Jacobs and Mr. Sacco and Mr. Solomon have a little conver-
7 sation.

8 MR. LANNA: May I just be heard on this?

9 THE COURT: Yes, you may.

10 MR. LANNA: The overall line of questioning,
11 I think, is so detrimental to these other defendants that
12 it has even gotten beyond the question of fair trial, I
13 think it is just brutal, but more specifically on the one
14 question where it caused Mr. Walsh to state that he had
15 spoken with Mr. Sacco on one occasion, I believe he said
16 the winter of 1971, at which time his attorney, Mr. Lanna,
17 was present, or words to that effect.

18 I realize that Mr. Sacco caused this to come
19 about and I am not putting the blame on anyone. What I am
20 concerned with at this point is that this jury heard it and
21 this just adds to our woe. When I say our woe, I am
22 speaking of Mr. Rhines, because this jury might very properly
23 at this point say, you know, it appears like Lanna is part
24 of the conspiracy here.

25 I am going to get up and argue that the

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Walsh-direct

873

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2 defendant's guilt is personal, innocence or guilt is
3 personal, and that, of course, we have no association
4 with anyone else, aside from the fact that the government
5 has brought a conspiracy charge and we have been joined
6 in an indictment, and I think at this point this case is
7 just overwhelmingly loaded with material that really affects
8 this defendant. I just feel and I beseech your Honor to
9 reconsider that ruling on the severance. This guy is
10 entitled to a fair trial.

11 MR. BRODERICK: Your Honor, may I just be heard
12 on one slight point on that?

13 THE COURT: Yes.
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1 came 2 Walsh - direct

2 THE COURT: No, overruled.

3 A Yes.

4 He mentioned that he paid \$25 regular interest to
5 you.

6 Q Did you get a statement from Mr. Robbins at that time?

7 A He talked to me and that was the statement.

8 Q Did he give you a signed statement that day?

9 A No, I did not take a signed statement.

10 Q If Mr. Robbins testified that he never told you that
11 would that be an inaccurate statement on his behalf?

12 MR. BRODERICK: I object, your Honor.

13 THE COURT: Sustained.

14 Q Also, Mr. Walsh, isn't it a fact that in that report
15 that Mr. Robbins told you that he mentioned to Benny that he
16 needed the \$1,000?

17 MR. BRODERICK: I object, your Honor.

18 THE COURT: Overruled.

19 A In this statement, my recollection and the statement
20 does not say that.

21 Q In paragraph 6, Mr. Walsh, Robbins explained that two
22 weeks previous to the time that Sacco--

23 MR. BRODERICK: Your Honor, I object to him reading
24 it.

25 THE COURT: He is calling it to his attention.

1 came 3

Walsh - direct

886

2 A Yes, he did. That Benny Gentile--he mentioned to
3 Benny Gentile that he needed additional money, a thousand
4 dollars.

5 Q Thank you, Mr. Walsh. At this interview, Mr. Walsh,
6 did Mr. Robbins tell you that the thousand dollars had been
7 forced on him?

8 A No, he did not state that to me. Then.

9 Q When did he tell you that, Mr. Walsh?

10 A At a later date.

11 Q What was that date, can you recall?

12 A Oh, it would be within a month of when I had
13 contacted him he mentioned that when the Ford LTD Country
14 Squire--

15 MR. JACOBS: Objection, your Honor, I move--this is
16 not responsive.

17 THE COURT: Yes, the question was when did he men-
18 tion it. The date I guess is what he wants.

19 A I just said in between--it would be within the period
20 of a month.

21 Q You knew in advance that I was going to meet Mr.
22 Robbins at Benny's Charcoal Pit on December 6; is that correct?

23 A That's correct.

24 Q Did you and other agents conduct a surveillance on
25 that day?

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Walsh - cross

921

2 MR. BRODERICK: Your Honor, this is--

3 THE COURT: No.

4 MR. BRODERICK: I object to that.

5 THE COURT: Overruled.

6 Q What was the question again?

7 Q Did Mr. Robbins tell you on February the 29th that
8 he could not determine what the holes were?

9 A Yes, that's correct.

10 Q Thank you.

11 Again on February 29th, did Mr. Robbins tell you that
12 the defendant Gentile said that this thousand dollars was a
13 loan and that he would then have to pay \$75 a week?14 A Yes, the statement says that the thousand dollars
15 was a loan.16 Q Did Mr. Robbins tell you who said that it was a
17 loan?

18 A Gentile.

19 Q On February 29, when Mr. Robbins told you about this
20 thousand dollar loan, did he relate to you a conversation that
21 he had with the defendant Sacco at that time, at the time he
22 got the thousand dollar loan, about a contract on Mr. Iodice?

23 Did he tell you about that on February 29?

24 A Well, he mentioned that they had no contracts with
25 regard to the \$500 check.

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Walsh -- cross

2 to do with this particular indictment, did it?

3 A Nothing whatsoever.

4 Q And as far as you know, and only if you know, I had
5 never represented Mr. Sacco in this indictment have I?

6 A I have no knowledge that you ever represented him.

7 Q All right.

8 I represent Mr. Rhines as far as you know; isn't
9 that correct?

10 A That's correct.

11 MR. LANNA: Thank you very much.

12 THE COURT: You will have some redirect, Mr. Broderick?

13 MR. BRODERICK: Yes, your Honor.

14 THE COURT: All right then we will adjourn until
15 2:15; is that adequate?

16 All right. Don't talk about the case. Have a plea-
17 sant lunch.

18 (Jury left the courtroom.)

19 THE COURT: I will listen to those tapes at 2
20 o'clock down here.

21 THE WITNESS: They go for about an hour and a half.

22 THE COURT: I will listen to them tonight then.

23 MR. JACOBS: I'm sorry, your Honor has to go through
24 listening to them.

25 THE COURT: Yes, I'm sorry, Mr. Sacco, and I just

1 came 3

Walsh - cross

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2 think you intentionally violated the agreement which has been
3 made here, that I have cautioned you about before.

4 It is my opinion that you did it deliberately and
5 for your own personal motivations and not for any purpose in
6 this trial.

7 And that is my personal opinion. And I am speaking
8 to you in a quiet, refined, easy-going tone of voice. But I do
9 think, and again I am saying this quietly and as calmly as I
10 know, that you are using this courtroom for your own purpose
11 and not for this case. And I urge you to reconsider what you
12 are doing in this case.

13 MR. SACCO: Just for the record, your Honor, I would
14 like to respond.

15 I take an exception to your remarks--

16 THE COURT: All right, you have taken your exception.
17 Court stands adjourned until 2:15.

18 (Adjourned at 1:05 p.m.)
19
20
21
22
23
24
25

1 tp9

Squires-direct

2 this jury which questions you were going to ask and what
3 you were going to produce and it didn't call for any side
4 bar conference or anything else except those direct
5 questions, and I don't know why we can't proceed here
6 that way.

7
8 MR. SACCO: The only reason, the next question
9 I am going to ask him is, "Did you lend him \$5000," and
10 he indicated he was going to take the Fifth.

11 THE COURT: Then don't ask him that question.

12 MR. SACCO: It is a very, very important question.

13 THE COURT: That is too bad. I am not going
14 to permit you to ask that question.

15 MR. SACCO: That's why I didn't do it.

16 MR. BRODERICK: Look at my cross-examination now,
17 your Honor. This is -- I mean, this is the worst I have
18 ever heard.

19 THE COURT: All right. Let's go. If he takes
20 the Fifth he takes the Fifth. You know what you put your
21 foot into.

22 MR. SACCO: All right.

23 (In open court.)

24 BY MR. SACCO:

25 Q Mr. Squires, do you have a criminal background?

A Yes.

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1 tp10 Squires-direct

2 Q Will you state to this Court and jury what your
3 convictions are?

4 A Well, that's --

5 Q In the last ten years, only your convictions.

6 A In the last ten years?

7 Q Yes.

8 A Stolen securities, stolen automobile, fraud on
9 the security agreement, attempted arson one or arson two.

10 Q You got a pretty bad record, don't you?

11 A Do I have a pretty bad record?

12 Q Yes.

13 A I would say so, yes.

14 Q Mr. Squires, did you and Mr. Tortora lend Mr.
15 Robbins \$5000?

16 MR.BRODERICK: I will object to this question,
17 your Honor.

18 THE COURT: Sustained.

19 A I am invoking the Fifth --

20 THE COURT: Sustained. You don't have to say a
21 thing.

22 THE WITNESS: I don't have to say a thing?

23 THE COURT: No.

24 Q In your conversation with Mr. Robbins you stated
25 that he asked you for a loan of some money; is that

1 mp

2 based upon the United States Attorney's misrepresentation
3 of the contents of the written statement.

4 This is another instance of wrongful conduct
5 which requires dismissal of this indictment.

6 THE COURT: Now, Mr. Sacco, there is sufficient
7 in the testimony before the grand jury to sustain the
8 return of a true bill in this case. Your motion --

9 MR. SACCO: That's not my argument, your Honor.
10 My argument is that the United States Attorney deliberately
11 read to the grand jury a statement that is not true, which
12 is 3509.

13 Now, someone had to be lying, either Mr. Walsh
14 changed the statement or the U.S. Attorney misread it.

15 THE COURT: All right. The motion is denied.
16 Are we ready to proceed?

17 MR. SACCO: I have another one if you want me
18 to continue.

19 At this time, your Honor, I respectfully move
20 that your Honor grant me a severance and a mistrial based
21 upon the fact that I could not obtain a fair trial due
22 to the conduct of the attorneys in this case.

23 I have been impeded and derived throughout the
24 trial by the attorneys for the other defendants who,
25 because of claimed fear for their clients' rights, have

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1
2 been afraid to present or allow a complete and proper defense
3 to be introduced.

4 Your Honor has seen the attorneys' actions and
5 has heard their remarks throughout in which they have claimed
6 that matters I have introduced should not have been put into
7 evidence. In making their remarks they have shown dis-
8 respect and lack of confidence in the ability of this Court
9 to allow proper evidence to be introduced and to exclude
10 improper evidence.

11 My defense requires complete disclosure to the
12 Court and jury of all the relevant and proper evidence which
13 should be submitted.

14 The defense attorneys wish to suppress and hide
15 all the pertinent evidence. With a severance I would be
16 enabled to call the other defendants' witnesses and make this
17 complete disclosure. Without it I am precluded from doing
18 so.

19 I ask for this because I have been prejudiced by
20 the remarks of my assigned counsel who has been directed to
21 sit with me. Instead, he is thwarting and impeding me.
22 Your Honor has heard him make remarks which are derogatory
23 and hurt my case.

24 It has also made it difficult for me to retry my
25 case, being surrounded by hostile attorneys on all sides.

1 mp

2 The Court should appoint my attorney.

3 MR. JACOBS: Does your Honor wish any comments?

4 THE COURT: Yes, Mr. Jacobs. What do you have to
5 say about your conduct here, which I have found to be
6 exemplary, and I don't find to be derogatory to anyone,
7 but I would like your personal observations so the record
8 reflects what you have to say in that respect.

9 MR. JACOBS: Your Honor, I represent a client
10 here, I feel I have done the best I can to protect his
11 rights. We have disagreed with Mr. Sacco on occasion.
12 We have discussed it with Mr. Sacco. We have attempted
13 to show him where we said he was wrong.

14 I don't believe any of that is in front of the
15 jury, and your Honor, I don't think that anything I have
16 done or Mr. Lanna has done has prejudiced Mr. Sacco.

17 THE COURT: I think, Mr. Jacobs, also that I
18 have noticed that you have consulted, you and Mr. Lanna
19 have consulted with Mr. Sacco when there have been
20 occasions of testimony being presented, and I think you
21 have counseled him along the way as to the proper manner
22 of presenting some of that and advised him; isn't that
23 correct?

24 MR. JACOBS: That is correct.

25 THE COURT: What do you have to say, Mr. Lanna?

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1
2 MR. LANNA: I am somewhat disturbed, because
3 I join with Mr. Jacobs in the remarks he made. I think
4 if anybody has been prejudiced, I certainly think it has
5 been -- I speak for my own client -- Mr. Rhines. I think
6 he has a very long road to travel here in view of some of
7 the material which has gotten into this. I can fully
8 appreciate Mr. Sacco's wishing to run his own defense
9 in the manner in which he wishes to run it, but we are
10 the co-defendants, I think we have to take into con-
11 sideration one's rights and privileges, as I have said on
12 very many occasions when I have asked for a mistrial,
13 I think defendant Rhines has been prejudiced because of
14 that conduct.

15 THE COURT: It is so that the three of you
16 did consult about certain evidence to go in and you advised
17 Mr. Sacco as to certain matters, it would appear that way
18 to me sitting back here; is that correct?

19 MR. LANNA: Of course the advice wasn't always
20 followed.

21 THE COURT: But at least you consulted about it;
22 isn't that a fact?

23 MR. LANNA: Yes, your Honor. May I make one
24 additional remark which I think is very pertinent?

25 I have found, as far as Mr. Rhines is con-

1 mp

2 concerned, that he has been further prejudiced because I
3 think quite innocently in some cases my name came up.
4 Mr. Sacco conferred with me constantly throughout the
5 trial, which it was my pleasure to assist him on, but I
6 just wonder how the jury feels about this situation. I don't
7 know. This is a conspiracy trial, and I trust they don't
8 feel that perhaps that is part of the conspiracy. I am
9 very concerned about it.

10 THE COURT: All right.

11 Mr. Sacco, I was going to make a statement for
12 the record so that the record would be accurate here.

13 One time when you had an outburst against Mr.
14 Solomon, and I honestly believe on the basis of what I
15 have seen in this court that that outburst was merely for
16 the purposes of record to perhaps indicate to an appellate
17 court some rights of yours having been prejudiced here.

18 Following that outburst I noticed that you had
19 your arm about Mr. Solomon, immediately following that,
20 that you talked in what appeared to be an amiable way with
21 Mr. Solomon with respect to certain legal problems involved
22 here. And you have consulted with him.

23 As a matter of fact, he has participated to
24 some extent in some of the argument since that time on
25 legal problems here, and it is the opinion of this Court

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1 that that outburst was completely unwarranted, it was for
2 an ulterior purpose, and that you have had the benefit
3 of excellent legal advice here and that your rights in
4 that respect have not been violated.
5

6 Therefore, your motion is denied. All right.

7 MR. SACCO: All right. Next motion, your Honor.

8 I make a motion, this is a motion to strike, your Honor.

9 I move to strike from the record and from the evidence
10 before the jury all of the testimony of the FBI agents,
11 Carl W. Anaditz, J. Michael Hayes, Stevens Barnett, Bob
12 Reutter, Julius Bonavolonta.

13 No. 1, their testimony is completely incompetent,
14 irrelevant and immaterial to the government's case. They
15 testified that they --

16 THE COURT: Well, let me suggest this: You have
17 made your motion. I have reviewed their testimony. I am
18 aware of it, and your motion is denied.

19 MR. SACCO: I would like to get into the record
20 my reasons, your Honor.

21 THE COURT: No, I don't need your reasons.
22 It is adequate that you made the motion to strike and --

23 MR. SACCO: At this time I would offer into,
24 as an exhibit, the reasons why, your Honor.

25 THE COURT: Well, you may mark them for identi-

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Robbins-direct

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1 MR. SACCO: I ask for a 10-minute recess.

2 THE COURT: No, I am sorry. We have had plenty
3 of time.

4 MR. SACCO: Then I have no alternative but to
5 ask the questions and have you sustain them. I don't want
6 to burden the Court with this, but that's going to have to
7 be my position to protect my record.

8 THE COURT: Proceed.

9 MR. SACCO: Would the Court be kind enough to let
10 me finish the questions before you sustain them?

11 THE COURT: I think we have so far. Proceed.

12 BY MR. SACCO:

13 Q Mr. Robbins, isn't it a fact that on December 21,
14 1971, the information referring to the recordings was read
15 to the grand jury from a report that was made by an agent?

16 MR. BRODERICK: I object, your Honor.

17 THE COURT: Sustained.

18 Q Mr. Robbins, did you have to sign any sort of a
19 consent agreement for these recordings?

20 MR. BRODERICK: I object, your Honor.

21 THE COURT: Sustained.

22 MR. SACCO: At this time, your Honor, I respect-
23 fully ask the Court to play the recordings to the jury.

24 MR. BRODERICK: I object, your Honor.

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Robbins-direct

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2 Honor?

3 THE COURT: Next question, Mr. Sacco.

4 MR. SACCO: Excuse me.

5 THE COURT: Yes. Certainly.

6 MR. SACCO: I have just been handed a note by Mr.
7 Solomon that says, "Do not argue with the Judge."8 MR. BRODERICK: Your Honor, at this time could
9 we have an argument outside the presence of the jury?

10 THE COURT: No. Next question, please.

11 BY MR. SACCO:

12 Q Mr. Robbins, in that statement that was given to
13 the grand jury on December 8, 1971, do you recall in that
14 statement saying, "Around April or May, 1970" --15 THE COURT: No. I am going to stop you right now,
16 Mr. Sacco. That question is improper and I am not going
17 to permit you by reading a question in such a way to try
18 to get something before this jury that should not be here.

19 Next question, please.

20 Q Were all the statements which you heard which
21 were read before the grand jury true?

22 MR. BRODERICK: I object, your Honor.

23 THE COURT: Sustained.

24 Q Mr. Robbins, do you know if the United States
25 Attorney read any wrong information into the grand jury

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Robbins-direct

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1 THE COURT: Mr. Lanna, what is your position?

2
3 *MR. LANNA: My position stays as it has from the
4 beginning, if your Honor please.

5 THE COURT: Very well. And yours, too, Mr.
6 Jacobs?

7 MR. JACOBS: I concur with Mr. Lanna.

8 THE COURT: Very well. Denied.

9 MR. SACCO: They are in evidence, your Honor, and
10 I make the demand upon the Court for them to hear it.

11 THE COURT: Very well. It has been overruled in
12 that respect.

13 MR. SACCO: How can you overrule something that
14 is in evidence, your Honor?

15 THE COURT: May we have the next question,
16 please?

17 MR. SACCO: That's the purpose of putting evidence
18 in.

19 THE COURT: May we have the next question, please?

20 MR. SACCO: I object to it, your Honor.

21 THE COURT: Very well. Next question.

22 MR. SACCO: Is your Honor going to preclude the
23 other evidence that is in from the jury looking at it?

24 THE COURT: Your next question, Mr. Sacco, please.

25 MR. SACCO: Is it or isn't it in evidence, your

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2 MR. SOLOMON: I say you ought to let it in.

3 THE COURT: Do you have the stenographic transcript
4 of it?

5 MR. BRODERICK: I had it. Let me check it.

6 MR. SOLOMON: You gave us a copy.

7 THE COURT: You may have had it but I don't recall
8 it.

9 What else do you have after this?

10 MR. SACCO: I have Mr. Iodice.

11 THE COURT: I am going to do the same thing with
12 Mr. Iodice that I did with Mr. Robbins.

13 MR. SACCO: Then I have Mr. Greenspan.

14 THE COURT: I know, but those are the rules.

15 MR. SACCO: Your Honor, I am not trying to make a
16 mockery of the Court, believe me. I am not trained in the
17 rules of evidence.

18 THE COURT: You are doing a pretty good job of it, and
19 this is in the absence of the jury. I am going to give you
20 all the time you need, but I am going to give it to you when
21 it is proper, not just to take up time and perhaps prejudice
22 yourself and the co-defendants in what you are doing.

23 Really, Mr. Sacco, that is why I am doing it. I
24 will give you all the time in the world.

25 If this case took a month it won't bother me. But

1 gte 3.

2 I am telling you these things are absolutely useless and I
3 think they tend to hurt your trial of yourself. I wouldn't
4 restrict you on time if you need time.

5 MR. SACCO: I sort of felt--

6 THE COURT: Not at all.

7 MR. SACCO: You are looking to get it over with.

8 THE COURT: I am not looking to get it over. I am
9 here on my good behavior.

10 MR. SACCO: You see, on the issue of the tapes, your
11 Honor, I only want to hear the tone of the voice and the manner,
12 you know, that it is an intelligible tape in comparison with
13 the other one. That is my argument to the jury.

14 THE COURT: Most of it is static.

15 MR. SACCO: No, this one with Aurnow is clear.

16 THE COURT: But it might be hearsay. Most of the
17 other is static.

18 MR. SACCO: All I can tell you is here is an intelli-
19 gible tape and the ones that could have hurt us is unintelli-
20 gible.

21 THE COURT: You make whatever arguments you want, but
22 I don't think you should have brought it out after you had
23 the stipulation.

24 MR. SACCO: Your Honor, I missed that stipula-
25 tion. Believe me. I don't want to go into it, but I missed

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